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MEETING NOTICE: ARRS
The Administrative Regulation Review Subcommittee is tentatively scheduled to meet Tuesday, July 11, 2006 at 10 a.m., in Room 149 of the Capitol Annex Building, Frankfort, Kentucky. See tentative agenda on pages 1-3 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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VOLUME 33, NUMBER 1 – JULY 1, 2006

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE
TENTATIVE AGENDA - JULY 11, 2006 at 10 a.m. in Room 149, Capitol Annex

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31 KAR 4:040. Procedures for absentee voting in county clerk's office.
 Voting
31 KAR 5:030 & E. Exception to time restriction on voting for voters who require the use of an accessibility device. (*E* expires 10/29/06)

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103 KAR 15:020 & E. Election to pay share of tax on behalf of corporation. (*E* expires 8/31/2006) (Amended After Comments) (Deferred from June)
103 KAR 15:140 & E. Biodiesel tax credit. (*E* expires 7/31/2006) (Deferred from April)
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GENERAL GOVERNMENT CABINET
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201 KAR 1:050. License application. (Deferred from June)
201 KAR 1:190. Computer-based examination sections, applications, and procedures. (Deferred from June)

Real Estate Commission

Commission
201 KAR 11:105. Advertising listed property; advertising public information about specific property; when consent and authorization of owner or principal broker is required.
201 KAR 11:121 & E. Improper conduct. (*E* expires 8/5/2006) (Deferred from April)
201 KAR 11:220. Errors and omissions insurance requirements.
201 KAR 11:250. Listing and purchase contracts and other agreements entered into by licensees; provisions required.
201 KAR 11:350. Seller's disclosure of property conditions form.
201 KAR 11:400. Agency disclosure requirements.
201 KAR 11:430. Procedure for criminal records background check; disciplinary action against licensees for acts committed before or during the application process.

Board of Hairdressers and Cosmetologists

201 KAR 12:020. Examination. (Hearing Held) (SOC Due 6/15)

Board of Nursing

Board
201 KAR 20:490. Licensed practical nurse intravenous therapy scope of practice.

Board of Chiropractic Examiners

Board
201 KAR 21:015. Code of ethical conduct. (Not Amended After Comments) (Deferred from April)
201 KAR 21:025. Board; officers, duties. (Deferred from April)
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201 KAR 21:041. Licensing; renewals, fees. (Deferred from April)
201 KAR 21:045. Specialties. (Not Amended After Comments) (Deferred from April)
201 KAR 21:051. Board hearings; complaints. (Deferred from April)
201 KAR 21:055. Colleges and universities; accreditation, approval. (Deferred from April)
201 KAR 21:060. Clinics; offices. (Deferred from April)
201 KAR 21:065. Professional advertising. (Deferred from April)
201 KAR 21:070. Licensing examination requirements. (Deferred from April)
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201 KAR 21:085. Preceptorship program. (Deferred from April)
201 KAR 21:095. Licensure and registration of persons performing peer review. (Not Amended After Comments) (Deferred from April)
201 KAR 21:100. Minimum standards for recordkeeping/itemized statements. (Deferred from April)

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201 KAR 22:045. Continued competency requirements and procedures. (Deferred from June)
201 KAR 22:070. Requirements for foreign-educated physical therapists. (Deferred from June)

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201 KAR 29:010. Activities under limited mandatory certification.
201 KAR 29:015. Fees.
201 KAR 29:050. Continuing education requirements.
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201 KAR 30.040. Standards of practice.

Board of Interpreters for the Deaf and Hard of Hearing

Board
201 KAR 38.050. Renewal of licenses and extension of temporary licenses.
201 KAR 39.070. Application, qualification, and certification levels for temporary licensure.
201 KAR 39.090. Continuing education requirements.

Kentucky Board of Licensure for Private Investigators

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401 KAR 42.070. Out-of-service UST systems, temporary closure and permanent closure of UST systems, and change-in-service of UST systems. (Hearing/Written Comments) (SOC Ext; Due 7/14)
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505 KAR 1:101E. Department of Juvenile Justice Scoring SOP. (Deferred from June)

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704 KAR 3:305. Minimum requirements for high school graduation. (Amended After Comments) (Deferred from May)
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806 KAR 2:061. Repeal of 806 KAR 2:060.

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Kentucky Board of Home Inspectors
815 KAR 6:010 & E. Home inspector licensing requirements and maintenance of records. (*E* expires 11/5/06)
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Office of Housing, Buildings and Construction

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815 KAR 20:030. License application; qualifications for examination, examination requirements, expiration, renewal, revival or reinstatement of licenses.
815 KAR 20:050. Installation permits.
815 KAR 20:070. Plumbing fixtures.
815 KAR 20:090. Soil, waste, and vent systems.
815 KAR 20:120. Water supply and distribution.

Division of Fire Prevention

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906 KAR 1:100. Nurse aide abuse registry, home health aide abuse registry, and hearing procedures.

Department for Medicaid Services

Medicaid Services
907 KAR 1:145 & E. Supports for community living services for an individual with mental retardation or a development disability. (*E* expires 10/1/2006) (Received Written Comments) (SOC Ext; Due 7/14)
907 KAR 1:155 & E. Payments for supports for community living services for an individual with mental retardation or a developmental disability. (*E* expires 10/1/2006) (Received Written Comments) (SOC Ext; Due 7/14)
907 KAR 3:180E. In-state inpatient hospital special reimbursement increase. (Expires 10/31/06)

Department for Community Based Services

Division of Policy Development

K-TAP, Kentucky Works, Welfare to Work, State Supplementation
921 KAR 2.055. Hearings and appeals. (Received Written Comments) (Amended After Comments)

Food Stamp Program
921 KAR 3.050. Claims and additional administrative provisions. (Received Written Comments) (Not Amended After Comments) (Not Amended)
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922 KAR 2:180. Requirements for registered child care providers in the Child Care Assistance Program.
922 KAR 2:240. Kentucky early care and education training provider’s credential and training approval. (Hearing/Written Comments) (Amended After Comments)
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.
EMERGENCY ADMINISTRATIVE REGULATIONS FILED AS OF NOON, JUNE 15, 2006

NOTE: Emergency administrative regulations expire 180 days from the date of filing, or upon replacement, repeal, or withdrawal.

VOLUME 33, NUMBER 1 - JULY 1, 2006

STATEMENT OF EMERGENCY
20 KAR 1:080E

Unclaimed property administrative regulation, 20 KAR 1.080, needs to be filed as an emergency administrative regulation, because the holders of unclaimed property need clear guidelines for reporting their property to the Kentucky Treasury Department. This administrative regulation gives them the guidelines they need. They will also need time to mail due diligence letters to the owner of the property as required by this administrative regulation. These letters must be sent to the owners no less than sixty (60) days or more than 120 days prior to the report date which is November 1. The emergency administrative regulation will be replaced by an ordinary administrative regulation. The ordinary administrative regulation is identical to this emergency administrative regulation.

ERNIE FLETCHER, Governor
JONATHAN MILLER, Treasurer

DEPARTMENT OF THE TREASURY
(Emgineer Amendment)

20 KAR 1:080E. Reports to be filed by holders of unclaimed property.

RELATES TO: KRS 393.110(1)
STATUTORY AUTHORITY: KRS 393.280(4)
EFFECTIVE DATE: 11-1-2006

NECESSITY, FUNCTION, AND CONFORMITY: KRS 393.280(4) allows the State Treasurer to promulgate administrative regulations and any reasonable and necessary rules for the enforcement of KRS Chapter 393. KRS 393.110(1) requires the holder of unclaimed property to submit annual reports to the Department of the Treasury concerning the property. This administrative regulation establishes the reporting requirements for a holder of unclaimed property.

Section 1. Reports Filed by a Holder of Unclaimed Property. A holder of unclaimed property shall annually file, in accordance with KRS 393.110, a completed, Unclaimed Property Report/Remit Form with the Department of the Treasury no later than the close of business on November 1 of each year. The report shall be submitted by diskette or compact disc in the format required by the department for ten (10) or more properties. All property so reported shall be turned over simultaneously with the report by November 1 to the Department of the Treasury. This reporting requirement applies to all properties, with the exception of travelers' checks and money orders, and shall be verified and shall include:

(a) The name, if known, and last known address, if any, of each person appearing from the records of the holder to be the owner of any property of value of $100 or more presumed abandoned under this chapter and in the case of unclaimed funds of life insurance corporations, the full name of the insured or annuitant and his or her last known address according to the records of the life insurance corporation;
(b) Identifying data of the property owner, including, but not limited to, Social Security number, date of birth, policy number, check number, name, and address of listed beneficiary(ies), etc.;
(c) Description of the property, including, but not limited to, physical description, property type codes, and the amount appearing from the records to be due, except items of value of $100 or less. The items of value of $100 or less may be reported in aggregate.

(d) The date when the property became payabe, demandable, or returnable, and the date of the last known transaction with the owner with respect to the property if readily available.

(2) The holder of property presumed abandoned shall send written notice to the apparent owner, not more than 120 days or less than sixty (60) days before filing the report, stating that the holder is in possession of the property subject to this section, except the holder shall not be required to mail a notice to any apparent owner where the fair cash value of the property is $100 or less. The notice shall contain:

(a) The statement to the owner that properties are being held to which the address appears entitled;
(b) The name and address of the person holding the property and any necessary information regarding a change of name and address of the holder.

(c) A statement, if satisfactory proof of claim is not presented by the owner to the holder by the date specified, the property will be placed in the custody of the department to whom all further claims must be directed.

(3) Any person, as required by this chapter to report property presumed abandoned, shall, by November 1 of each year, turn over to the department all property so reported, unless:

(a) The person making the report or the owner of the property shall certify to the department that any or all of the statutory conditions necessary to create a presumption of abandonment no longer exists or never did exist; or
(b) Shall certify the existence of any fact or circumstances which has a substantial tendency to rebut the presumption.

(3) If either of these conditions is met, then the person reporting or holding the property shall not be required to turn the property over to the department except on order of court.

(4) The holder of abandoned property shall maintain its records for a period of five (5) years from the date of its report for items reported in the aggregate.

(5) If the owner of the property reported in the aggregate makes a valid claim within five (5) years, the holder shall provide the owner with account data necessary for the department to identify the amount from the aggregate amount.

(6) The annual reports shall be retained by the department. The department shall, notwithstanding KRS 324.183 and 324.185, provide on an annual basis, in the manner of advertisement of property transferred to it, any procedures prescribed by the department in accordance with this section shall employ the most cost-effective methods available for the submission of reports to the department and the notice or advertisement of property transferred to the department. The cost of the publication shall be paid by the state. The advertisement shall be published as required on or before October 1 following the year when the report was received, and the publishing shall be paid constructive notice to all parties.

(7) If a person files an action in court claiming any property which has been reported, or is to be reported, under the provisions of this chapter, the person reporting or holding the property shall be under no duty, while the action is pending, to turn the property over to the department, but shall have a duty of notifying the department of the pendency of the action.

(8) The person reporting or holding the property or any claimant of it shall always have the right to a judicial determination of his or her rights under this chapter, and nothing in this chapter shall be construed otherwise. The Commonwealth may institute an action to recover the property presumed abandoned, whether it has been reported or not, and may institute in one (1) petition all property within the jurisdiction of the court in which the action is brought, if the property of different persons is set out in separate petitions.

Section 2. Reports on Property Held in an Interest Bearing Account. If the holder of unclaimed property is required to place
that property. In an interest-bearing account, the holder shall submit to the Department of the Treasury, the following reports: A statement on the interest-bearing account holding unclaimed property. The statement shall:

(1) Be the kind normally issued on an interest-bearing account;
(2) Be filed with the Department of the Treasury on an annual basis according to the holder’s normal course of business; and
(3) Include the value of the unclaimed property and the amount of the interest paid on the account.

Section 3. Reports on an Amount Paid Out of an Account Holding Unclaimed Property. (1) A holder of an account holding unclaimed property shall file a report within ten (10) business days of paying an amount out of the account.

(2) The report shall include:
(a) The name, Social Security number, and the address of the property owner;
(b) The amount paid;
(c) The portion of the amount that represents interest paid and the portion that represents the original amount of unclaimed property;
(d) The date the property was presumed abandoned;
(e) Proof of payment;
(f) An itemization of each fee or expense charged against the account; and
(g) An affidavit indicating:
1. What specific proof was used in determining that the person that received the amount or payment was the rightful claimant; and
2. That the procedures for paying a claim for unclaimed property as established in 20 KAR 1:040 were followed.

(3) The report shall be filed at the Department of the Treasury.


(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of the Treasury, 1050 U.S. Hwy. 127 South, Suite 100, [Capital Annex, Room 183] Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:00 p.m.

JONATHAN MILLER, Kentucky State Treasurer
APPROVED BY AGENCY: May 22, 2006
FILED WITH LBC: May 24, 2006 at 4 p.m.
CONTACT PERSON: Brenda Sweatt, Kentucky Department of the Treasury, 1050 U.S. Hwy. 127 South, Suite 100, Frankfort, Kentucky 40601, phone (502) 564-4722, fax (502) 564-4200.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Brenda Sweatt
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation establishes the reporting requirements for a holder of unclaimed property.
(b) The necessity of this administrative regulation: The necessity of this regulation is to ensure that holders of unclaimed property are placed on notice as to the proper procedures.
(c) How this administrative regulation conforms to the content of the authorizing statutes: The Department of the Treasury is the agency by statute to promulgate administrative regulations to enforce KRS Chapter 393. KRS 393.110(1) requires the holders of unclaimed property to submit annual reports to the Department of the Treasury concerning the property
(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 holders of unclaimed property submit their reports to the Department of the Treasury.

(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 holders file their reports and provides more detail concerning the information to be supplied to the Department of the Treasury.

Treasury.
(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 holders of unclaimed property file their reports with the Department of the Treasury.
(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 for submitting the annual reports 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 holders of unclaimed property are to file their annual reports to the Department of the Treasury which will reduce the amount of time the department’s staff spends answering basic questions.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative directly impacts 8,789 holders governed by this regulation in the Commonwealth of Kentucky. Any business association of 2 or more individuals are required to file unclaimed property.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: The amended administrative regulation will assist interested parties in obtaining information concerning the annual reports by clarifying the procedures and required information.

(5) Provide an assessment 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: Unclaimed Property Restricted Fund.

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

(9) TIERING: Is tiering applied? Yes, this regulation addresses interest bearing accounts.

STATEMENT OF EMERGENCY
502 KAR 10:110E

This emergency amendment to 502 KAR 10.110 is being promulgated in accordance with the statutory requirements of KRS 281.160, as amended by HB 707 2006 GA, which was signed into law on April 22, 2006. KRS 281A.160, as amended, requires the Department of State Police to promulgate emergency amendments to 502 KAR 10.110 to address a manpower shortage currently being experienced by the department in the provision of CDL skills test examiner services to CDL applicants. These emergency amendments provide for the minimum qualifications, mandatory training requirements, and define prohibited conflicts of interest for third-party CDL skills test examiners utilized by the Department of State Police to address this manpower. This emergency administrative regulation shall be replaced by an ordinary amended administrative regulation which is identical to the emergency amended administrative regulation. The ordinary amended administrative regulation was filed with the Regulations Compiler on June 15, 2006.

ERNIE FLETCHER, Governor
BG NOFMAN E. ARFLACK, Secretary

RELATES TO: KRS 281A.160(4) [59], 49 C.F.R. 383.75
STATUTORY AUTHORITY: KRS 281A.160(5) [44], (8)

EFFECTIVE: June 15, 2006

NECESSITY, FUNCTION, AND CONFORMITY: KRS 281A.160(5) [44] and (8) require the Kentucky State Police to promulgate administrative regulations [establishing procedures to authorize a third-party to administer the skills test required for third-party CDL skills test examiners [commercial driver's licensees]. This administrative regulation establishes the minimum qualifications, mandatory training requirements, and prohibited conduct of interest for those who have obtained a CDL license. The third-party CDL skills test examiner shall administer the test to the candidate.

Section 1. Definitions. (1) "AAMVMA" means the American Association of Motor Vehicle Administrators.
(2) "CDL" means a commercial driver license.
(3) "DOE" means the Kentucky Department of Education.
(4) "Family member" means the current and, if any, former spouse of a third-party skills test examiner, or a person within the third degree of relationship to any of them, or the spouse of that person.
(5) "FMCSA" means the Federal Motor Carrier Safety Administration.
(6) "KSP" means the Kentucky State Police.
(7) "MOA" means memorandum of agreement.
(8) Third-party CDL skills test examiner means an employee of the DOE who, pursuant to a MOA entered into between KSP and DOE, administers CDL skills tests to other DOE employees seeking a CDL to operate DOE-owned school buses, and persons retained by KSP under contract to administer CDL skills tests to DOE applicants.

Section 2. Third-Party CDL Skills Test Examiner Minimum Qualifications. DOE employees or persons seeking to enter into a contractual agreement with KSP to act as a third-party CDL skills test examiner shall satisfy the following minimum qualifications for initial appointment and retention:
(1) Shall not have accrued more than six (6) demerit points on their driving record;
(2) Shall possess a high school diploma or GED;
(3) Shall, if a DOE employee, possess a Class A or B CDL with passenger and school bus endorsements;
(4) Shall, if a third-party contract examiner, possess:
(a) A Class A CDL with all available endorsements; and
(b) Previous experience as a CDL skills test examiner or two (2) years experience within the past five (5) years as a licensed Class A or B CDL operator in good standing;
(5) Shall maintain their CDL license with all endorsements required by subsections (3) and (4) of this section;
(6) Shall pass one (1) complete battery of forms A, B, or C of the CDL knowledge tests administered by KSP. These tests shall be retaken every four (4) years;
(7) Shall pass the CDL skills test administered by KSP in the type of commercial vehicle in which they will test CDL applicants. This CDL skills test shall be retaken every four (4) years at the direction of KSP; and
(8) Shall give written consent to KSP to conduct a Kentucky criminal history records check, and further give written consent to an updated Kentucky criminal history records check being performed every four (4) years. Persons who are determined to have felony or misdemeanor convictions involving violence, dishonesty, or a question of trustworthiness may be rejected for appointment, or have their appointment as a third-party CDL skills test examiner revoked, based upon a case-by-case discretionary consideration of the facts and circumstances surrounding the conviction.

Section 3. Third-Party CDL Skills Test Examiner Mandatory Training Requirements. (1)(a) Except as provided in paragraph (b) of this subsection, persons appointed as a third-party CDL skills test examiner shall successfully complete the initial forty (40) hours of CDL skills test examiner training provided by KSP and pass all exams associated with the training. This training shall be approved by AAMVMA and FMCSA. Certification of completion shall be issued by KSP upon successful completion of the training. (b) Persons who have previously administered CDL skills tests for KSP and who completed this training within the past two (2) years shall be waivered from this training requirement.
(2) Third-party CDL skills test examiners shall attend and successfully complete an annual ten (10) hour in-service training conducted by KSP.
(3) Third-party skills test examiners shall participate in the certification process for CDL examiners administered through AAMVMA. This certification shall be sought and maintained through KSP. It shall be the responsibility of the third-party skills test examiner to pay all fees charged by AAMVMA to obtain and maintain this certification. Failure to obtain this certification within two (2) years from the date of appointment as a third-party CDL skills test examiner shall be grounds for revocation of appointment.
(4) Third-party CDL skills test examiners shall be issued identification cards and a unique examiner identification number that identifies them as a CDL examiner. The identification card shall be carried and produced on request of KSP. The examiner identification number shall be recorded by the third-party CDL skills test examiner on all CDL examination reports and related documents required by KSP to be completed by the examiner in the course of their duties.
(5) Third-party CDL skills examiners shall conduct CDL skills tests in a uniform manner approved by KSP. KSP shall not be responsible for the purchase or maintenance costs for the uniform.

Section 4. Additional CDL Skills Test Requirements. (1) Third-party skills test examiners shall comply with 49 C.F.R. 383.75, Subpart G and H. (2) Third-party CDL skills test examiners shall, without deviation, administer the CDL skills test in accordance with the KSP Driver Testing Branch CDL Examiners Manual. (3) Third-party CDL skills test examiners shall record the CDL applicant's skills test scores.
(4) Third-party CDL skills test examiners shall be required to keep and maintain files pertaining to CDL tests that they have administered for a period of two (2) years. These records shall be subject to inspection by KSP or any other state or federal entity performing an audit of these records.
(5) Third-party CDL skills test examiners shall be subject annually to at least once (1) check ride performed by an official observer who, at the direction of KSP, shall ride with the examiner and observe the CDL skills test as it is given to ensure the examiner is administering the test in full compliance with all federal and state laws and administrative regulations.
(6) Third-party CDL skills test examiners shall be subject to "select tests" conducted by KSP. These tests shall consist of the initial test administered by the third-party CDL skills test examiner, utilizing commercial vehicle equipment provided by or on the behalf of the CDL skills test applicant at no cost to KSP. The retest results shall then be compared to verify that there are no deficiencies with the original test given by the third-party CDL skills test examiner. If the two (2) test scores differ, making a difference as to whether the CDL applicant passed or failed, the score given by KSP on its retest shall be entered into the official record as the actual score of the CDL applicant.
(7) Third-party CDL skills test examiners shall be subject to random inspection testing by KSP or FMCSA. These tests may consist of the third-party CDL skills test examiner administering a second CDL skills test to a CDL applicant who is an agent of KSP or FMCSA without the examiner’s knowledge of the individual's true identity.
(8) Third-party CDL examiners shall be subject to monitoring of their testing processes by KSP or FMCSA to ensure compliance with all federal and state laws and administrative regulations.
Section 5. Prohibited Conflicts of Interest. (1) A third-party CDL skills test examiner shall not administer a CDL skills test to a CDL applicant who is a family member or who has received commercial truck driving instruction training at a commercial truck driving school that is owned or operated by a family member.

(2) A third-party CDL skills test examiner shall not administer a CDL skills test to a CDL applicant with whom the examiner is involved in a dating, romantic, or other type of intimate personal relationship, regardless of whether the examiner and applicant share a residence.

(3)(a) Except as provided in paragraph (b) of this subsection, a third-party CDL skills test examiner who administers CDL skills tests under a contractual agreement with KSP and who is a present or former commercial truck driving school employee, shall not administer third-party CDL skills test exams to any CDL applicant who has attended a commercial truck driving school as a student of the examiner's present or former employer.

(b) Once a third-party CDL skills test examiner has ceased employment with a commercial truck driving school for at least one (1) year, the examiner may be authorized to administer CDL skills test exams to CDL applicants who are commercial truck driving students of their former employer, if KSP, in its sole discretion determines that the examiner can administer the exam in a fair, unbiased, and legal manner as prescribed by the FMCSA, 49 C.F.R. Parts 383 and 384.

Section 6. Revocation of Appointment. Failure to comply with the requirements of this administrative regulation shall be grounds for revocation of appointment as a third-party CDL skills test examiner by KSP and shall further constitute good cause for termination of KSP's contractual obligations with examiners who administer CDL skills test pursuant to contract.

Section 7. Third-Party CDL Skills Test Examiner Records. All records pertaining to selection and appointment of third-party CDL skills test examiners shall be maintained by KSP. These records shall be renewed prior to renewing CDL third-party CDL skills test examiner appointment, whether by Memorandum of Agreement with DOE or contractual agreement with other third-party CDL skills test examiner. Third-party CDL skills test examiner record shall contain the following information:

(1) Copy of qualification questionnaire containing photo of individual;

(2) Copy of DOE Memorandum of Agreement (if applicable);

(3) Copy of criminal history and driving record;

(4) All other documents related to the qualification and requirements of the examiner; and

(5) Any investigations, drug testing and covert testing, or monitoring conducted by KSP concerning the third-party CDL skills test examiner.

Section 8. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "KSP Driver Testing Branch CDL Examiners Manual", Version 2.0. The manual is produced by AAMVA and

(1) "Family" means the nature of the relationship to a transaction in which:

(a) Each has independent interests;

(b) The parties have not had a business or employment relationship within the past twelve (12) months; and

(c) The parties are not related to each other such as persons who are married, ancestors, descendants, brothers or sisters including blood relationships of either the whole or half blood without regard to legitimacy, relationship of parent and child by adoption, relationship of stepparent and stepchild, and those relationships of the second degree.

(3) "Family member" means spouse, including a former spouse, and children, as well as a person who is related to a third-party examiner as any of the following, whether by blood or adoption: parent, brother, sister, grandparent, grandchild, father-in-law, mother-in-law, brother-in-law, sister-in-law, son-in-law, daughter-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half-brother, half-sister, or a person with whom a romantic relationship is shared regardless of whether the relationship is cohabiting.

(4) "KCTCS" means the Kentucky Community and Technical College System.

Section 2. Application for Authorization. Examiners for the skills test portion for a commercial driver license (CDL) shall consist of employees of the Kentucky State Police, employees of the Kentucky Community and Technical College System (KCTCS) for truck-driving schools and employees of the Department of Education, Division of Pupil Transportation for school bus drivers. The application process shall be as follows:

(1) For school bus examiners. Examiners shall be selected from certified school bus driver trainers and recommended to the Kentucky State Police-Driver Testing Branch by the Division of Pupil Transportation.

(2) For KCTCS examiners. Application shall be made to KCTCS and selection approved by the Kentucky State Police Driver Testing Branch. Applicants for examiners in the KCTCS program shall have an extra-year-long relationship with any owner, employee, or director of any program offering commercial truck driving under the KCTCS or a proprietary school licensed under KCTC Chapter 168A.

(3) To be qualified as a commercial driver license third-party examiner, all applicants shall not exceed more than six (6) demerit points on their driving record and shall have the following:

(a) Examiners shall be required to have a high school diploma or GED.

(b) Examiners shall have a commercial driver license for the vehicle class of which they will be testing and all available endorsements, excluding the passenger endorsement unless the examiner will be testing those applicants seeking a passenger endorsement. Maintenance of license shall be the responsibility of each third-party CDL examiner.

(c) Examiners shall pass a (1) complete battery of forms A, B, C, and D of the commercial driver license knowledge tests administered by the Kentucky State Police-Driver Testing Branch. These tests shall be retaken every four (4) years at the direction of the Kentucky State Police-Driver Testing Branch.

(d) Examiners shall pass the skills test administered by the Kentucky State Police-Driver Testing Branch in a vehicle in which they will test applicants. This test shall be retaken every four (4) years at the direction of the Kentucky State Police.

(e) Examiners shall have a complete fingerprint-based criminal history check performed every four (4) years at the direction of the Kentucky State Police.

(4) The Kentucky State Police-Driver Testing Branch shall approve examiners. A criminal history check revealing a lack of good moral character, dishonesty or a felony conviction shall be cause to seek grounds for dismissal from the CDL Examiner Program after investigation and consideration by the Kentucky State Police. In making the determination of good moral character under this section, the Kentucky State Police shall consider only the following:

(a) If the applicant has been convicted of a crime;

(b) If the age of the applicant at the time any criminal conviction was entered;

(c) The length of time that has elapsed since the applicant's last criminal conviction; and

(d) The relationship of any embezzled or the ability of the applicant to be a third-party CDL examiner.

Section 3. Issuance of Authorization. Upon selection for commercial driver license examiner, examiners shall be required to do the following:

(1) Examiners shall successfully complete the Initial forty (40) hours of CDL Examiner Training conducted by the Kentucky State Police and pass all exams associated with the training unless waived by the Kentucky State Police due to prior training and experience. The training shall be approved by the American Association of Motor Vehicle Administrators (AAMVA) and Federal Motor Carrier Safety Administration (FMCSA).

(2) Examiners shall attend and successfully complete a yearly ten (10) hour in-service training conducted by the Kentucky State Police.

(3) Examiners shall participate in the certification process for
certified commercial examiners through the American Association of Motor Vehicle Administrators (AAMVA). Certification shall be sought and maintained through the Kentucky State Police Driver Testing Branch for certification with AAMVA. This section shall apply when the AAMVA certification program is implemented.

(4) The Kentucky State Police Driver Testing Branch shall enter into a memorandum of authorization and agreement with KCTCS as to conditions and requirements to individual third-party CDL examiners. This memorandum of agreement shall be terminated by the Kentucky State Police if cause exists based on an investigation by the Kentucky State Police and a finding that the agreement had been violated.

(5) Examiners shall be issued certificate of completion of the required forty (40) hours of examiner training by the Kentucky State Police Driver Testing Branch.

(6) Examiners shall be issued identification cards that identify them as commercial license examiners, which shall be earned and produced upon request of the Kentucky State Police or its designee.

(7) Examiners shall be issued a CDL third-party examiner number, which shall be used on reports produced by the examiner and the Kentucky State Police Driver Testing Branch.

(8) Examiners shall have readily recognizable identification on their uniform that identifies them as a commercial driver license examiner and their name shall be on the uniform to readily identify the examiner. The identification shall not associate the examiner with being an employee of the Kentucky State Police. The form committee, consisting of members of KCTCS and KSP, shall be implemented to establish the uniform requirements for the examiner.

Section 4. Skill Test Requirements. Persons authorized to administer commercial driver license skills tests shall be subject to the following additional requirements:

(1) Administration of skills tests shall comply with 49 C.F.R. 383.75, Subparts G and H of the Department of Transportation Federal Highway Administration Federal Motor Carrier Safety Regulations.

(2) Examiners administering the skills tests shall, without deviation, administer the test in accordance with the Kentucky State Police Driver Testing Branch CDL Examiners Manual. The manual is produced by the American Association of Motor Vehicle Administrators (AAMVA) and is incorporated by reference.

(3) Examiners administering the skills portion of CDL tests shall record the scores on a CDL Skills Test Reporting Form and shall, immediately following the test, call the Driver Testing Branch of the Kentucky State Police and report the scores given to the person tested. The CDL Skills Test Reporting Form is incorporated by reference.

(4) Examiners shall be required to keep and maintain files pertaining to CDL tests that they have administered for a period of two (2) years. These records shall be subject to inspection by the Kentucky State Police or its designee.

(5) Examiners shall be subject to at least two (2) check rides annually by a designee of the Kentucky State Police Driver Testing Branch who shall ride with the examiner and observe the test as it is given to ensure compliance with all federal and state laws and administrative regulations.

(6) Examiners shall be subject to "Select Tests" conducted by the Kentucky State Police. These tests shall consist of the applicant being seated after not later than two (2) days following the original testing of the third-party CDL examiner utilizing equipment provided by the commercial truck driving school, at no cost to the Kentucky State Police. The test results from each test shall then be compared to verify that there are no deficiencies with the original test given by the third-party examiner. Should the two (2) test scores differ, making a difference whether the applicant passed or failed, the score given by the Kentucky State Police shall be entered into the official record as the final cause of the applicant.

(7) Examiners shall be subject to testing by the Kentucky State Police or Federal Motor Carrier Safety Administration. These tests may consist of the third-party CDL examiner testing an individual who may be an agent of the Kentucky State Police or the FMCSA without the examiners knowledge of the individual's true identity.

(8) Third-party CDL examiners shall be subject to monitoring of their testing process by the Kentucky State Police or the Federal Motor Carrier Safety Administration to ensure compliance with all federal and state laws and administrative regulations.

Section 5. Types of Examinations. A third-party examiner shall not administer CDL skills test to any present or former family member or at any school owned or operated by a family member, or former family member.

(2) A man's length relationship - A present or former trucking school employee, whether proprietary or otherwise, shall not administer third-party CDL skills examinations to any student of their present or former employer. Once a CDL school employee has been employed by a trucking school for at least one (1) year, they may then be authorized to administer third-party CDL skills examinations to students of their former employer; if it is believed that they can do so in a fair, unbiased and legal manner as prescribed by the Federal Motor Carrier Safety Administration regulations, 49 C.F.R. Parts 383 and 384. KCTCS third-party examiners may administer CDL skills tests at other KCTCS locations where they have not worked as an employee in the last year.

Section 6. All students who attend a Kentucky professional truck driving school, licensed by the Kentucky Board for Proprietary Education, shall take their commercial driver license skills test from a licensed third-party examiner employed by the Kentucky Community and Technical College System. KCTCS may charge a fee for the administration of the test, if in an emergency situation, KCTCS may request that the Kentucky State Police administer a CDL test or tests, in lieu of a KCTCS employee, to a student of a professional truck driving school.

Section 7. Processing and Filing. All files pertaining to application or recommendation for third-party examiner certification shall be maintained by the Kentucky State Police Driver Testing Branch. These files shall be reviewed at each renewal period, prior to renewing agreements and authorization. Files on each examiner shall contain the following:

(1) Copy of application containing photo of individual.

(2) Copy of memorandum of authorization and agreement.

(3) Copy of criminal history and driving record.

(4) All other documents related to the qualification and requirements of the examiner.

(5) Any investigations, select testing, and overt testing or monitoring conducted on the Kentucky State Police on the CDL examiner.

Section 8. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) Kentucky State Police Driver Testing Branch CDL Examiners Manual, Version 2.0. The manual is produced by the American Association of Motor Vehicle Administrators (AAMVA); and

(b) CDL Skills Test Reporting Form, July 2001.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Custodian of Records, Kentucky State Police Headquarters, 919 Versailles Road, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

BG NORMAN E. AIRFLACK, Secretary
MARK MILLER, Commissioner
APPROVED BY AGENCY: June 13, 2006
FILED WITH LRC: June 15, 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) 573-1636.

REGULATORY IMPACT ANALYSIS AND HEARING STATEMENT

Contact Person: Roger G. Wright

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the minimum qualifications, training requirements, and outlines the prohibited conflicts of interest for third-party CDL skills test examiners

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(b) The necessity of this administrative regulation: HB707 2006 GA and signed into law on April 22, 2006, amends KRS 281A.160(5),(8), and requires the Department of State Police to promulgate administrative regulations to establish procedures under which third-party CDL skills test examiners may provide CDL skills test to CDL applicants.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation complies with KRS 281A.160 in that establishes that third-party CDL skill test examiners must administer the CDL skills test in the same manner as KSP employee CDL skills test examiners and further must comply with federal regulations relating to these tests. This regulation further outlines prohibited conflicts of interest as required by KRS 281A.160(5).

(d) How the administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation establishes the minimum qualifications, required training, and prohibited conflicts of interest for third-party CDL skills test examiners.

(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: HB707 2006 GA and signed into law on April 22, 2006, provides the Department of State Police with 90 days to amend the existing regulation to authorize the department to hire third-party examiners other than the limited number of third-parties who had been previously authorized to provide CDL skills test examiner services to the department under KRS 281A.160(3)(c)(1), (2) prior to amendment.

(b) The necessity of the amendment to this administrative regulation: Prior to amendment, KRS 281A.160 did not authorize the Department of State Police to hire third-party CDL skills test examiners who did not offer a commercial truck driving course of instruction through the Kentucky Community and Technical College System or who offered such a program through a proprietary school licensed under KRS Chapter 165A. The amended statute and regulation will allow the department to utilize additional qualified individuals to meet a manpower shortage the department is experiencing in providing CDL skills tests to CDL applicants in a timely and efficient manner.

(c) How the amendment conforms to the content of the authorizing statutes: The amendments provided the minimum qualifications, training requirements, and outlines the prohibited conflicts of interest for third-party CDL skills test examiners.

(d) How the amendment will assist in the effective administration of the statutes: The amendments allow for the Department of State Police to address its manpower shortage in administered CDL skills test to CDL applicants in a timely and efficient manner while ensuring only qualified, trained individuals who must avoid conflicts of interest administer third-party skills tests on behalf of the department.

(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 DOE employees who administer third-party CDL skills tests to other DOE employees seeking a CDL to operate school buses, and will further impact individuals seeking to enter a contractual agreement with the department to administer third-party skills tests. This regulation will have a peripheral impact on employees of commercial truck driving schools who also work under contract with the department, insofar as such third-party examiners will not be allowed to administer CDL skills tests to students of their current employer.

(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: See (3) above.

(5) Provide an estimate of how much it will cost to implement this administrative regulation: The funding for this regulation will come from the fees charged to CDL applicants, which is authorized by KRS 281A.160 (as amended in 2006 by HB707). The department estimates that it will pay contractual third-party CDL skills test examiners $150.00 per day and that it will contract with approximately 8 such examiners. Based upon assessed need, such examiners will likely be needed to provide contractual services on all authorized state working days within a calendar year.

(a) Initially: See (5) above.

(b) On a continuing basis: See (5) above.

(c) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: See (5) 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 at present.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation does not establish any direct fees. However, third-party skills test examiners are required to obtain uniforms at their own expense and must further obtain and maintain AAMVA certification at their own expense.

(9) TIERING: Is tiering applied? This regulation does provide for tiering, in that the minimum qualifications for DOE employees who administer CDL school bus tests are not identical to the minimum qualifications for contractual third-party examiners. This is due to the fact that DOE employees do not administer CDL skills tests to CDL applicants other than DOE employees seeking a CDL license to operate a school bus, whereas contractual examiners must be qualified to administer CDL skills test to CDL applicants seeking license to operate commercial vehicles other than school buses that require additional CDL endorsements. Further, the prohibition on CDL exams to students of an examiner's current employer only applies to third-party CDL skills test examiners. This is because DOE only provides its employees under a Memorandum of Agreement (MOA) with the Department of State Police for the sole purpose of assisting in provision of tests to DOE employees seeking license to operate school buses, and application of the employee/employer prohibition to DOE would defeat the purpose of the MOA and create additional manpower shortages for the department. Finally, KRS 281A.160(5)(as amended in 2006 by HB707) does not require application of the employee/employer testing prohibition to DOE employees as such employees to do not work for commercial truck driving schools.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate: 39 C.F.R. 383.75


3. Minimum or uniform standards contained in the federal mandate: 39 C.F.R. 383.75 requires: (i) Third-party skills test examiners to administer CDL skills tests in the same manner as state CDL skill test examiner employees; (ii) Third-party CDL skills test examiners to have an agreement with the state allowing the FMTSA to conduct random examinations, audits and inspections; (iii) Requires the state to certify that no individual on a state funded or approved program is required to perform the duties of a third-party skills test examiner; (iv) Requires third-party skills test examiners to meet the same qualification and training requirements as state examiners; requires the state to perform sample testing of CDL applicants who are tested by third-party examiners; reserve to the state the authority to take remedial action against examiners who fail to administer CDL skills tests in compliance with state and federal law and regulations.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate: This regulation imposes the prohibition on contractual third-party skills test examiners from testing student CDL applicants of their current and former (i.e., last 12 months) employer.

STATEMENT OF EMERGENCY

908 KAR 3:190E

This emergency administrative regulation is being promulgated in order to implement an employee drug testing program in the Department for Mental Health and Mental Retardation Services' state-operated facilities which provide services and support for the
treatment, habilitation, and rehabilitation of persons who have a mental illness or emotional disability or who have mental retardation. This action must be taken on an emergency basis because the Cabinet for Health and Family Services has a compelling obligation to eliminate illegal drug use from its state-operated facilities in order to protect the health, safety, and welfare of all persons residing in these state-operated facilities. This emergency administrative regulation differs from the previous emergency administrative regulation in that this emergency administrative regulation contains a detailed set of procedures and guidelines for the implementation and ongoing operation of the test designated facility employee drug testing program. This emergency administrative regulation also deletes the previously proposed category of postaccident drug testing. The ordinary administrative regulation is identical to this emergency administrative regulation.

ERNIE FLETCHER, Governor
MARK D. BIRDWHISTELL, Secretary

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Mental Health and Mental Retardation Services
Division of Administration and Financial Management
(NEWS Emergency Administrative Regulation)

908 KAR 3:190E. Drug testing policies at a state-operated facility for persons with mental illness or mental retardation.

RELATES TO: KRS 218A.050, 218A.070, 41 U.S.C. 701 - 707
EFFECTIVE: June 6, 2006
NECESSITY, FUNCTION, AND CONFORMITY: KRS 210.010 authorizes the secretary of the Cabinet for Health and Family Services to prescribe administrative regulations for the administration of the cabinet and of the institutions under the control of the cabinet. KRS 194A.050 also empowers the secretary to promulgate administrative regulations to carry out cabinet programs. This administrative regulation establishes the procedures for the drug testing of employees and contractors of state-operated institutions for persons with mental illness or mental retardation.

Section 1. Definitions. (1) "Administrator on duty" means a facility employee charged with decision-making authority for the facility during the employee's given shift.

(2) "Applicant" means an individual seeking employment in a test-designated position at a facility operated by the department.

(3) "Appointing authority" means the Secretary of the Cabinet for Health and Family Services or his designee.

(4) "Controlled substance" is defined in KRS 216A.010(5).

(5) "Confirmatory test" means a second analytical procedure to identify the presence of a specific drug or metabolite which is independent of the initial test and which uses a different technique and chemical principle from that of the initial test in order to ensure reliability and accuracy.

(6) "Department" means the Department for Mental Health and Mental Retardation Services.

(7) "Donor" means the individual from whom a urine specimen is collected.

(8) "Dilute specimen" means a drug test urine specimen in which the creatinine concentration is less than 20 mg/dL and the specific gravity is less than 1.003.

(9) "Drug" is defined in KRS 218A.010(11).

(10) "Employee" means a person employed at or by a facility for the care and treatment of individuals with mental illness or mental retardation operated by the department.

(11) "Initial test" means an immunoassay test to eliminate negative urine specimens from further consideration and to identify the presumptively positive specimens that require confirmation or further testing.

(12) "Failed drug test" means a circumstance in which a test-designated employee, who is directed to submit to a drug test, engages in any of the following actions:
(a) Fails to submit to or complete a drug test;
(b) Interferes with a drug test procedure;
(c) Tamper with a drug test specimen;
or
(d) Has a second drug test conducted pursuant to Section 13(1) reported as a dilute specimen.

(13) "Negative drug test" means the results of a drug test administered with a test-designated employee in which the drug test specimens test below the cutoff levels as specified in the "Mandatory Guidelines for Federal Workplace Drug Testing Programs".

(14) "On duty" means being engaged in the performance of work responsibilities for the employer.

(15) "Positive drug test" means the results of a drug test administered with a test-designated employee in which the drug test specimens test above the cutoff levels as specified in the "Mandatory Guidelines for Federal Workplace Drug Testing Programs".

(16) "Random selection" means a statistically valid computer generated procedure utilized to determine test-designated employees selected to submit to random drug testing.

(17) "Reasonable suspicion" means the quantity of proof or evidence, based on specific, objective facts and reasonably derived from those facts about the conduct of an individual that would lead a reasonable person, based upon his training and experience, to suspect that the individual has been using or abusing a controlled substance or a prescription or nonprescription medication in violation of this administrative regulation.

(18) "Return to duty" means the circumstances and conditions under which a test-designated employee shall be allowed to resume their regular work duties when the employee has had a positive drug test result reported, has met the criteria specified in Section 3(5) of this administrative regulation.

(19) "Sample" means a representative portion of a urine specimen or quality control sample used for testing.

(20) "Specimen" means the portion of urine that is collected from a donor during a drug test.

(21) "Test-designated employee" means an individual employed at or by a facility for the care and treatment of individuals with mental illness or mental retardation operated by the department and who meets any of the following conditions:
(a) Provides direct health care or treatment services to a resident of the facility;
(b) Has regular unsupervised access to residents of the facility; or
(c) Has unsupervised access to controlled substances.

(22) "Voluntary disclosure" means the willful and uncoerced admission by a test-designated employee concerning his misuse or abuse of a controlled substance or prescription or nonprescription medication or that the employee has entered into substance abuse treatment.

Section 2. Applicability. (1) The department shall develop and implement a test-designated facility employee drug testing program in accordance with the provisions of this administrative regulation and the "Mandatory Guidelines for Federal Workplace Drug Testing Programs".

(2) This administrative regulation applies to test-designated applicants and test-designated employees at a facility for the care and treatment of individuals with mental illness or mental retardation operated by the department.

Section 3. Facility Drug Testing Program. (1) Each department-operated facility shall establish and operate a test-designated employee drug testing program. This program shall be implemented in accordance with this administrative regulation.

(2) As part of this program, each facility shall designate a drug testing coordinating officer (hereafter "the officer" and shall include any designee).

(3) Each officer shall:
(a) Serve as the primary point of contact for facility test-designated employee drug testing purposes between their respective facility and the department and between their respective facility and the drug testing vendor;
(b) Coordinate all facility test-designated employee drug testing activities for their respective facility;
(c) Prepare and periodically update a master roster of all test-designated employees at their respective facility. This roster shall include both state employees and contract employees;
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(d) Submit the initial and updated master rosters periodically to the designated contact person with the contracted vendor of drug testing services;

(e) Serve as the employee designated at each facility to receive drug testing results from the drug testing vendor;

(f) Ensure that an appropriate on-site drug testing area is prepared and maintained at the facility; and

(g) Maintain all records pertaining to the facility's drug testing program in a secure and confidential manner. Unauthorized disclosure of information contained in these records shall be prohibited.

(4) The roster prepared pursuant to subsection (3)(c) of this section, shall include the following information concerning each employee:

(a) The employee's name;

(b) The employee's job title; and

(c) The employee's regularly scheduled work shift.

(5) The officer shall, within two (2) working days of receiving drug testing results, report these results in writing to their facility director. The officer shall also report in writing to the commissioner of the department (hereafter to include his designee) within two (2) working days of receiving the drug testing results, the following information concerning any facility employee whose drug test results reported, failed a drug test or voluntarily disclosed his misuse or abuse of a controlled substance or prescription or non-prescription medication:

(a) The employee's name;

(b) The employee's job title;

(c) The results of the employee's drug test;

(d) The type of drug test that occurred;

(e) The date the employee was placed on directed sick leave status; and

(f) Whether disciplinary action will be pursued.

(6) Except as provided in Section 5(3)(b) of this administrative regulation, all costs associated with implementing the facility test-designated employee drug testing program prior to July 1, 2006, shall be borne by the respective facility requesting the drug testing. Beginning July 1, 2006, all costs associated with conducting pre-employment drug testing of prospective test-designated state employees and random and reasonable suspicion drug testing shall be borne by the respective facility requesting the drug testing. Beginning July 1, 2006, all costs associated with conducting pre-employment drug testing of prospective test-designated contract employees shall be borne by the contract agency.

(7) Except as required by law or expressly authorized or required in this section, the appointing authority or anyone with knowledge shall not release employee information that is contained in the records maintained pursuant to this administrative regulation.

(8) An employee subject to testing shall be entitled, upon written request, to obtain copies of records pertaining to the employee's drug test. The appointing authority shall promptly provide the records requested by the employee.

(9) The appointing authority may disclose information required to be maintained under this administrative regulation pertaining to an employee to that employee or to the decision-maker in a lawsuit, grievance, or other proceeding instituted by or on behalf of the individual, and arising from the results of a drug test administered under the requirements of this administrative regulation, or from the appointing authority's determination that the employee engaged in prohibited conduct (including a worker's compensation, unemployment compensation, or other proceeding relating to a benefit sought by the employee).

(10) The appointing authority shall release information regarding an employee's records as directed by the specific written consent of the employee authorizing release of the information to an identified person. Release of this information shall be in accordance with the terms of the employee's consent.

Section 4. Testing of Test-Designated Facility Employees. (1) The appointing authority shall require a test-designated employee, as a condition of pre-employment or continued employment, to be subject to a drug test as provided in this administrative regulation.

(2) Tests authorized. The following categories of test-designated employee drug testing shall be authorized in accordance with Section 9 of this administrative regulation:

(a) Reasonable suspicion testing. A test-designated employee shall submit to a drug test if there is reasonable suspicion that the employee has violated this administrative regulation.

(b) Frequent point testing. An applicant not occupying a test-designated position shall submit to and have a negative drug test result reported prior to being appointed to a test-designated position.

(c) Follow-up testing. The following conditions apply to test-designated employee follow-up testing:

1. An employee shall submit to an unscheduled follow-up drug test if the employee has engaged in any of the following within the previous twenty-four (24) months:

   a. Voluntarily disclosed his misuse or abuse of a controlled substance or prescription or non-prescription medication;

   b. Entered into or completed a rehabilitation program for drug abuse; or

   c. Been disciplined for violating this administrative regulation.

2. The appointing authority shall not require an employee who is subject to follow-up testing to submit to more than six (6) unscheduled follow-up drug tests within a twelve (12) month period.

(d) Random selection testing. A test-designated employee shall submit to a drug test if the employee is selected for testing on a random selection basis.

(3) Random selection testing.

(a) The commissioner of the department shall designate the number of random drug tests to be conducted in a given facility in any one (1) year.

(b) The number of random drug tests conducted in a given facility shall not exceed fifteen (15) percent of the number of all test-designated employees within the facility in any one (1) year.

Section 5. Positive Drug Test Results or Failed Drug Test. A test-designated employee who has a positive drug test result reported or who failed a drug test shall be immediately removed from his work duties and the employee shall be subject to disciplinary action, up to and including dismissal.

(2) A test-designated employee who has a positive drug test result or who failed a drug test shall be:

(a) Informed of the positive drug test result or the failed drug test;

(b) Informed that the facility director is placing the employee on directed sick leave status if a state employee;

(c) Instructed to leave the facility campus immediately. A state employee shall receive the notice of directed sick leave prior to being instructed to leave the facility campus; and

(d) Informed that disciplinary action, up to and including dismissal, shall be initiated.

(3) If the resulting disciplinary action specified in subsection (2)(c) of this section is not voluntary dismissal, the employee shall be allowed to return to duty if he provides:

(a) Written documentation, sent directly to the officer from a substance abuse treatment provider verifying that the employee has been evaluated, is compliant with the recommendations of the provider, and that the employee is safe to return to work. The officer shall offer to assist the employee in obtaining substance abuse treatment services; and

(b) Written documentation that he has successfully passed, at his own expense, a drug test from a vendor approved by the officer. This return to duty documentation shall be sent directly from the vendor to the officer.

(4) An employee who was subject to the conditions of Section 4(2) of this administrative regulation and subsection 2(d) of this section and who subsequently has a second positive drug test result or who fails a drug test shall be:

(a) Informed of the positive drug test result or the failed drug test;

(b) Informed that the facility director is placing them on directed sick leave status if a state employee;

(c) Instructed to leave the facility campus immediately. A state employee shall receive the notice of directed sick leave prior to being instructed to leave the facility campus; and

(d) Informed that disciplinary action to seek dismissal is being initiated.

(5) Nothing in this administrative regulation shall alter the con-
tract agreement between each facility and their contract vendors or the internal personnel policies of the contract vendor.

Section 6. Prohibited Behavior. An employee shall not engage in the following activities while on duty or on facility grounds:
(1) The unlawful manufacture, distribution, sale, dispensation, possession, or use of a controlled substance;
(2) Consuming or under the influence of a controlled substance illegally obtained;
(3) The use, misuse, or abuse of prescription or nonprescription medication in a quantity or manner sufficient to impair a test-designated employee's ability to perform assigned duties or in any way that places patient or fellow employee safety at risk; or
(4) Interfering with a testing procedure or tampering with a test sample.

Section 7. Voluntary Disclosure. (1) A test-designated state employee who voluntarily discloses the misuse or abuse of a controlled substance or prescription or nonprescription medication shall:
(a) Not be disciplined for self disclosure reporting provided that the self disclosure occurred prior to either of the following:
1. A determination being made that reasonable suspicion drug testing is to occur; or
2. The employee being selected for follow-up or random drug testing;
(b) Receive written notice that they are being placed on directed sick leave status if a state employee;
(c) Be directed to leave the facility campus immediately; and
(d) Be subject to the provisions of Sections 4(2)(c) and 5 and of this administrative regulation.

(2) A test-designated state employee who voluntarily discloses that he has entered into substance abuse treatment shall:
(a) Not be disciplined for self disclosure reporting provided that the self disclosure occurred prior to either of the following:
1. A determination being made that reasonable suspicion drug testing shall occur; or
2. The employee being selected for follow-up or random drug testing;
(b) Be informed that he shall be required to submit to follow-up drug testing; and
(c) Not provide direct care services until the follow-up drug test results are reported.

(3) A test-designated state employee may take advantage of opportunities specified in subsection (1) of this section no more often than two (2) times while employed at a facility. A state employee making a voluntary disclosure shall not be excused from a subsequent drug test or from otherwise complying in full with this administrative regulation. A state employee making a voluntary disclosure shall remain subject to drug testing requirements after making the disclosure and shall be subject to disciplinary action as a result of a subsequent positive drug test result report or a failed drug test.

(4) A test-designated employee of a contract agency who:
(a) Voluntarily discloses the misuse or abuse of a controlled substance or prescription or nonprescription medication or that he has entered into substance abuse treatment shall be informed that his employing agency shall be notified of the employee's self disclosure;
(b) Voluntarily discloses the misuse or abuse of a controlled substance or prescription or nonprescription medication or that he has entered into substance abuse treatment and dismissal does not occur shall be subject to follow-up drug testing;
(c) Voluntarily discloses the misuse or abuse of a controlled substance or prescription or nonprescription medication shall be instructed to leave the facility campus immediately and shall be informed that he shall not be allowed to return to work until he is in compliance with Section 5(3) of this administrative regulation.

(5) An employing agency having been notified pursuant to subsection (2) of this section, shall make a determination as to what disciplinary action, if any, shall be initiated with its employee, as well as any other condition for continued employment with the agency.

(6) The officer shall offer to assist a test-designated employee who voluntarily discloses the misuse or abuse of a controlled substance or prescription or nonprescription medication in obtaining substance abuse treatment services.

Section 8. Facility Employee Notification. (1) New test-designated facility employees shall receive information and training concerning this administrative regulation as part of the employee's initial orientation training.
(2) Current test-designated facility employees shall receive information and training concerning this administrative regulation prior to implementation of the test-designated employee drug testing program.
(3) Information and training provided pursuant to subsections (1) and (2) of this section shall include:
(a) Information regarding the type and nature of services and supports available through the Kentucky Employee Assistance Program;
(b) How to access these services and supports; and
(c) The availability of and how to access other local or regional substance abuse treatment services.

(4) The human resources office within each facility shall maintain documentation that all employees have received information and training concerning this administrative regulation.

(5) A test-designated facility employee shall sign a document certifying:
(a) Receipt of information and training concerning this administrative regulation;
(b) An understanding of the requirements, limitations, and restrictions on facility employee conduct contained in this administrative regulation; and
(c) An understanding of the potential consequences, up to and including dismissal, for violation of this administrative regulation.

Section 9. Drug Testing Guidelines. (1) Random drug testing of test-designated employees shall occur under the following guidelines:
(a) On-site random drug testing of test-designated employees shall occur on approximately a quarterly basis;
(b) The commissioner of the department shall determine the number and rate of test-designated employees who shall be directed to submit to random drug testing;
(c) Following consultation with and approval by their respective facility director and the commissioner of the department, the officer shall contact the designated contract vendor contact person to schedule and make arrangements for the next session of on-site random drug testing;
(d) The contract vendor shall provide the officer with a roster of the names of employees randomly selected to participate in the next session of on-site random drug testing at least two (2) weeks prior to the scheduled testing date. This roster shall include a sufficient number of alternate selections so as to allow for those employees originally selected to submit to random drug testing and who, for whatever reason, did not report to work on the scheduled testing date. The officer shall not disclose to any test-designated employee selected for testing the date and time of the scheduled random drug test prior to the date and time the employee is to report for testing;
(e) The officer, following consultation with and approval by his facility director, shall make adequate arrangements to ensure the ongoing orderly operation of the facility while the random drug testing is occurring. These arrangements shall include a master schedule of the order and time when selected employees shall be tested. This information shall not be shared with any employee or supervisor prior to the test date except in accordance with paragraph (f) of this subsection;
(f) The officer shall inform only those facility employees deemed to be absolutely necessary as to date and time of the next scheduled session of on-site random drug testing. A test-designated employee scheduled for testing shall not be notified that he has been selected for testing until the specified time and date the employee is to report for testing;
(g) Upon the date of the next scheduled session of on-site random drug testing, the officer shall inform a test-designated employee selected for random drug testing that he has been selected.
to submit to on-site random drug testing. This notification shall be
made utilizing the highest possible degree of discretion and re-
spect for the employee;

(h) The officer shall ensure that each test-designated em-
ployee selected for random drug testing shall arrive at the facility
drug testing site at his scheduled time and shall monitor throughout
the donor process; and

(i) A test-designated employee selected for random drug test-
ing shall return to his regularly assigned job duties upon successful
completion of the donor process.

(2) Reasonable suspicion drug testing of test-designated em-
ployees shall occur under the following guidelines:

(a) A test-designated employee shall be subject to drug testing
if there is reasonable suspicion that the employee has violated
provisions in this administrative regulation;

(b) Reasonable suspicion drug testing shall take place as soon
as possible following the determination that reasonable suspicion
exists. This testing shall take place on-site at the facility;

(c) A test-designated employee required to submit to reason-
able suspicion drug testing shall not provide direct care services
until the drug test results have been reported;

(d) A determination that reasonable suspicion exists to require
a test-designated employee to submit to drug testing shall be
based on specific, immediate and clearly describable observations
concerning the employee's appearance, behavior, speech or body
odors. Observations may include indications of the chronic and
withdrawal effects of controlled substances;

(e) A reasonable suspicion determination shall be made only
under the following conditions:

1. An initial reasonable suspicion determination is made con-
cerning a test-designated employee by an individual in a position of
supervisory authority at the facility;

2. The initial reasonable suspicion determination is verified by
the administrator on duty or the officer; and

3. Prior to a facility employee making an initial reasonable
suspicion determination or a reasonable suspicion determination
verification, the employee shall have received department
approved training and instruction on how to make a reasonable
suspicion determination.

(3) Preappointment testing.

(a) An individual applying for employment at a department-
operated facility shall first submit to and successfully pass a drug
test prior to gaining employment at the facility. Testing shall take
place at an off-site testing site approved by the officer.

(b) An individual shall not begin employment at a facility if a
positive drug test result or a failed drug test has been reported for
the individual.

(c) An applicant who has a positive preappointment drug test
result or who fails a preappointment drug test shall not be subse-
quently considered for appointment at a department operated faci-
ility for a period of at least one (1) year.

(4) Follow-up testing

(a) A test-designated employee shall submit to unscheduled
follow-up drug testing if the employee has engaged in any of the
following within the previous twenty-four (24) months.

1. Voluntarily disclosed the misuse or abuse of a controlled
substance or prescription or nonprescription medication;

2. Entered into or completed a rehabilitation program for drug
abuse;

3. Had a positive drug test result reported or failed a drug test
and dismissal did not occur;

4. Reports a criminal drug statute conviction; or

5. Been disciplined for violating this administrative regulation.

(b) A test-designated employee who is subject to follow-up
drug testing shall not be required to submit to more than six (6)
unscheduled follow-up drug tests within any twelve (12) month
period.

(c) Follow-up drug testing shall take place at an off-site testing
site as directed by the officer.

Section 10. Drugs Included. (1) If a drug test is administered
prior to July 1, 2006, the department shall, at a minimum, test for:

(a) Marijuana;
(b) Cocaine;
(c) Opiates;
(d) Amphetamines; and
(e) Phencyclidine.

(2) If a drug test is administered on or after July 1, 2006, the
department shall, at a minimum, test for:

(a) Marijuana;
(b) Cocaine;
(c) Opiates;
(d) Amphetamines;
(e) Phencyclidine;
(f) Morphine;
(g) MDMA (Ecstasy);
(h) Methadone;
(i) Benzodiazepines;
(j) Barbiturates; and
(k) Cocaine.

(3) If conducting reasonable suspicion drug testing, the
department may test for any drug listed in Schedule 1 or 2 as de-
defined in KRS Chapter 218A.

(b) Before the department tests for other drugs, it shall first
obtain approval from the appointing authority.

(c) If requesting approval for the testing of other drugs, the
department shall first submit to the appointing authority the
agency's proposed initial test methods, testing levels, and
proposed performance test program.

(4) This administrative regulation shall not limit an agency
which is specifically authorized by law to include additional catego-
ries of drugs in the drug testing of its own employees.

(5) Initial and confirmatory drug testing conducted pursuant to
this administrative regulation shall utilize cutoff levels as specified in
the federal "Mandatory Guidelines for Federal Worksite Drug
Testing Programs".

(6) Drug test specimens that meet or exceed the cutoff levels
as specified in subsection (5) of this section shall be reported as a
positive test result.

(7) Drug test specimens that test below the cutoff levels as
specified in subsection (5) of this section shall be reported as a
negative test result and shall constitute a passed drug test. Further
testing of a negative specimen for drugs shall not be permitted,
and the negative specimen shall be discarded or pooled for use in
a laboratory's internal quality control program.

Section 11. Employee Duty to Report Convictions. A test-
designated employee shall report a criminal drug statute violation
for which he was convicted within five (5) working days of the con-
viction to the facility's human resources office. A test-designated
employee who reports a criminal drug statute conviction shall be
subject to follow-up drug testing.

Section 12. Prescription and Nonprescription Medications. (1)
A facility employee taking a prescription or nonprescription medica-
tion prior to or during his work shift shall immediately inform his
supervisor of this fact if:

(a) The instructions, indications, and contraindications associ-
ated with the medication give the employee reason to believe that
the medication may in some way impair his work performance; or

(b) Having once taken the medication, the employee begins to
experience an unexpected, atypical, or adverse reaction to the
medication, which impedes his work performance.

(2) An employee who fails to comply with subsection (1) of this
section shall be subject to disciplinary action, up to and including
dismissal.

(3) Having been notified by an employee pursuant to Section
12(1), the employee's supervisor shall closely monitor the em-
ployee's work performance throughout the employee's work shift. If
the supervisor determines that there is a sufficient perceived im-
pairment of the employee's work performance so as to raise con-
cerns related to employee or patient safety, the supervisor shall
notify the facility's administrator on duty or his designee con-
cerning the employee's impaired work performance. The administrator
on duty shall then conduct an assessment and make a determination
regarding the employee's impaired work performance.

(4) If the results of an assessment conducted pursuant to sub-
section (3) of this section indicate that the employee's work per-
formance is impaired so as to raise concerns related to employee or patient safety, the administrator on duty shall:

(a) Temporarily assign the employee to nonpatient related duties, provided that the temporary reassignment does not place the employee at risk of injury or otherwise jeopardize the orderly operation of the facility; or

(b) Allow the employee to leave from work utilizing accumulated leave time.

(5) The employee shall be allowed to return to his regular work duties if the results of an assessment conducted pursuant to subsection (3) of this section indicate that the employee's work performance is not impaired.

Section 13. Dilute Specimen. (1) If a drug test is conducted in accordance with this administrative regulation and the test result is reported by the drug testing vendor as a dilute specimen, the officer shall:

(a) Inform the donor of the drug test result;

(b) Inform the donor that he shall be allowed one (1) opportunity to take a second drug test;

(c) Direct the donor to take the second drug test as soon as possible; and

(d) Direct the donor not to ingest an excessive quantity of liquids prior to taking the second drug test.

(2) A second drug test administered pursuant to subsection (1) of this section in which the test result is reported by the drug testing vendor as a dilute specimen shall be considered a failed drug test.


(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Mental Health and Mental Retardation Services, 100 Fair Oaks Lane, 4th floor, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

JOHN BURT, Commissioner
MIKE BURNSIDE, Deputy Secretary
MARK D. BIRDWHISTELL, Secretary
APPROVED BY AGENCY: May 24, 2006
FILED WITH LRC: June 6, 2006 at 4 p.m.
CONTACT PERSON: Jill Brown, Office of Legal Services, 275 East Main Street S W-B, Frankfort, Kentucky 40601, phone (502) 564-7905, fax (502) 564-7573.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Randy Oliver 564-4860 or Kathy Burke 564-5627
(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes drug testing procedures for test-designated employees at state-operated facilities for individuals with mental illness or mental retardation.

(b) The necessity of this administrative regulation: This administrative regulation is necessary in order to better ensure safe, humane, and quality service provision to individuals residing in state-operated facilities for individuals with mental illness or mental retardation.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 194A.023 and 210.010 authorize the secretary of the Cabinet for Health and Family Services to prescribe rules and regulations for the administration of the cabinet and the institutions under the control of the cabinet. KRS 194A.050 also empowers the secretary to promulgate administrative regulations to carry out cabinet programs.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will allow for the establishment of a drug testing program to be conducted with test-designated employees at state-operated facilities for individuals with mental illness or mental retardation, thus helping to better ensure safe, humane and quality service provision to individuals residing in these 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 affected by this administrative regulation: A total of 8 facilities operated by the Department for Mental Health and Mental Retardation Services, with approximately 3,500 employees (both state and contract), 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: Employees at the state-operated facilities for individuals with mental illness or mental retardation will potentially be impacted in 4 ways:

(a) Prospective new test-designated employees will be required to successfully pass a drug test as a condition for employment;

(b) Up to 15% of the current test-designated workforce at the facilities will be subject to random drug tests per year;

(c) Any test-designated employee will be subject to drug testing when there is reasonable suspicion to believe that the employee is in violation of this administrative regulation; and

(d) Any test-designated employee who previously had a positive drug test result, failed a drug test or voluntarily disclosed the misuse or abuse of a controlled substance or prescription or non-prescription medication and have met the specified conditions to return to duty shall be subject to follow-on drug testing.

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

(a) Initially: The previous emergency administrative regulation included start-up costs. There are no new initial costs related to this administrative regulation.

(b) On a continuing basis: Costs related to the facility employee drug testing program are primarily dependent on the total number of drug tests to be administered, as well as the relative number of tests that will be administered on-site at each facility (more expensive) vs. the number of tests to be administered at the vendor's testing site (less expensive). Given that we do not have any past experience with facility employee drug testing, the following information reflects estimated ranges of potential costs:

Pre-Screening: Approximately 100-125 new facility employee hirings per month (1,200-1,500 annually) X $59 per test = $70,800 - $88,500 annually.

Random Testing: ($350-$525 tests annually X $59 per test) + ($250 on-site set-up fee X 6 facility testing sites X 4 testing sessions per year) = $26,650 - $36,975 annually

Reasonable Suspicion: 100 tests annually X $114 per test = $11,400 annually

Follow-up: 100-200 tests annually X $59 per test = $5,900 - $11,800 annually

Total Cost Range = $114,750 - $148,575.

In addition, costs for the ongoing administration of the drug testing program are estimated at $33,125 (salary and fringe for .1 FTE program administrator X 6 facilities +.25 FTE central office administrator).

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: All costs associated with the drug testing of prospective or current test-designated facility employees will be borne by the facilities within their existing budgets. All costs associated with the central office administration of the drug testing program will be borne by the Department for Mental Health and Mental Retardation Services.

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

(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.
EDUCATION PROFESSIONAL STANDARDS BOARD  
(As Amended at ARRS, June 13, 2006)

16 KAR 1:050. Local educator assignment data.

RELATES TO: KRS 161.020, 161.028, 161.030, 161.1221
STATUTORY AUTHORITY: KRS 161.1221
NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.020, 161.028, and 161.030 require that a teacher and other professional school personnel hold a certificate of legal qualification for the person's respective position to be issued by the Education Professional Standards Board. KRS 161.1221 requires that the Education Professional Standards Board identify all professional school personnel assigned out-of-field. This administrative regulation establishes the requirements for public school districts for reporting educator assignment data used to determine out-of-field teaching.

Section 1. Definitions. (1) "Content area" means an academic area as defined in the Kentucky Program of Studies established in 704 KAR 3.303 or the Curriculum Framework established by the Kentucky Department of Education and KRS 158.6451.
(2) "Course" means a unit of study created by a district or school, involving one (1) or more academic content areas, intended to be provided to one (1) or more population types.
(3) "Course Identifier" means a number that uniquely identifies a unit of study provided by a public school or district.
(4) "Grade" means a code supplied by the Kentucky Department of Education.
(5) "Organization ID" means a unique number that identifies a school or district across data systems or within the same data system.
(6) "Population" means a group of students defined by similar demographic or disability criteria.
(7) "Unique staff ID" means a number that identifies a particular person across data systems or within the same data system.
(8) "Work assignment" means a job function requiring certification by the Education Professional Standards Board.

Section 2. Public school districts shall report information about course offerings and assignments of all certified staff to the Education Professional Standards Board.

Section 3. Courses shall be identified by providing the Education Professional Standards Board with the following information:
(1) The name and course identifier of each course;
(2) The content area or areas covered by the course;
(3) The student population or populations for which the course is intended; and
(4) The lowest and highest grades for which the course is intended.

Section 4. (1) Teacher assignment information shall include the following information:
(a) The name and unique staff ID of the teacher;
(b) The teacher work assignment;
(c) The organization ID of the district or school of the assignment;
(d) The course identifier for each course established in Section 3 of this administrative regulation;
(e) The lowest and highest grade of students enrolled in each course;
(f) The number of students enrolled in each course; and
(g) The total number of hours of staff time devoted to the assignment over the school year.
(2) Administrator assignment information shall include the following information:
(a) The name and unique staff ID of the administrator;
(b) The administrator work assignment;
(c) The organization ID of the district or school of the assignment; and
(d) The total number of hours of staff time devoted to the assignment over the school year.

Section 5. (1) Each school district shall provide two (2) assignment reports to the Education Professional Standards Board each school year.
(2) (a) The first assignment report shall be provided to the Education Professional Standards Board no later than November [Corrections: November] 1.
(b) The second assignment report shall be provided to the Education Professional Standards Board no later than March [February] 1.

Section 6. (1) The school districts shall submit all required data electronically via software selected by the district and approved by the Kentucky Department of Education under regulations established in KRS 156.670 and 701 KAR 5:110.
(2) The school districts shall conform to the content and format specified in "Education Professional Standards Board Local Educator Assignment Data Reporting Standards and Procedures".
(3) The Education Professional Standards Board shall work with the Kentucky Department of Education to create a seamless data reporting system for school districts.
(4) The Education Professional Standards Board or its designee shall provide school districts with technical assistance and support necessary to collect the required information.

Section 7. (1) The Education Professional Standards Board shall maintain a publicly-available set of data-reporting standards[, which shall be updated yearly]. These shall include:
(a) A list or downloadable file of content areas;
(b) A list or downloadable file of population types;
(c) A list of courses and assignment reporting.
The list of courses and work assignments shall be available as a downloadable file.
(2) These standards shall be available on the Education Professional Standards Board Web site at: [www.kyepab.net](http://www.kyepab.net)
(3) These standards shall be available in "Education Professional Standards Board Local Educator Assignment Data Reporting Standards and Procedures".

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

TOM STULL, Chair
APPROVED BY AGENCY: April 14, 2006
FILED WITH LRC: April 14, 2006 at 10 a.m.
CONTACT PERSON: Brenda Dinkins Allen, Education Professional Standards Board, 100 Airport Road, 3rd Floor, Frankfort, Kentucky 40601, phone (502) 564-4606, fax (502) 564-7060.
VOLUME 33, NUMBER 1 – JULY 1, 2006

EDUCATION PROFESSIONAL STANDARDS BOARD
(As Amended at ARRS, June 13, 2006)

16 KAR 2:060. School nurse.

RELATES TO: KRS 161.020, [161.025] 161.030

STATUTORY AUTHORITY: KRS 161.020, 161.030 [166.070, 485.160]

NECESSITY, FUNCTION, AND CONFORMITY: KRS
161.030(1) vests the Education Professional Standards Board with
the authority to certify all teachers and other professional school
personnel in the public schools, KRS 161.030(2) requires the Edu-
cation Professional Standards Board to establish standards and
requirements for obtaining and maintaining a certificate[,] and
KRS 161.030(1) requires all certificates to be issued in accordance
with the administrative regulations of the board. This administra-
tive regulation establishes the standards [standard] for the issuance
of a certificate for the position of school nurse.

Section 1. Definition. "Related Field" means an area that is
applicable to the area of "nursing practice as defined below in KRS
314.011(9), including psychology, biological, physical, or
social sciences.

Section 2. Requirements for the Provisional Certificate for
School Nurse. (1) The provisional certificate for school nurse shall
be issued upon application to the Education Professional Stan-
dards Board using the "Form TC-1, Application for a Dependent
Kentucky Certification or Change in Salary Rate," incorporated by refer-
eence.

(2) The Provisional Certificate for School Nurse shall be issue-
d for a period of five (5) years to an individual upon application
and submission of proof of the following:
(a) A valid license as a registered nurse issued by the Ken-
tucky Board of Nursing;
(b) A minimum of a diploma or Associate’s Degree in nursing
from an accredited school of nursing; and
(c) A minimum of thirty (30) years of nursing experience within
the last five (5) years.

(3) The Provisional Certificate for School Nurse shall (may) be
renewed for subsequent five (5) year periods upon application
using "Form TC-2, Application for Certificate Renewal/Duplicate",
incorporated by reference, and upon submission of proof of the fol-
lowing:
(a) A valid license as a registered nurse issued by the Ken-
tucky Board of Nursing;
(b) Fifteen (15) credit hours of coursework from an accredited
Bachelor of Science program in nursing [program] or a related field
leading to a Professional Certificate for School Nurse.

(4) The Provisional Certificate for School Nurse shall be issued
at Rank III.

Section 3. Requirements for the Professional Certificate for
School Nurse. (1) The Professional Certificate for School Nurse
shall be issued upon application to the Education Professional Stan-
dards Board using Form TC-1.

(2) The Professional Certificate for School Nurse shall be issue-
d for a period of five (5) years to an individual upon application
and submission of proof of the following:
(a) A valid license as a Registered Nurse issued by the Ken-
tucky Board of Nursing;
(b) A Bachelor of Science Degree in Nursing or a related field
from an accredited school of nursing; and
(c) Either one (1) of the following:
1. Three (3) years of post-baccalaureate nursing experience
within the last five (5) years; or
2. School Nurse Certification from the National Association
of School Nurses.

(3) The Professional Certificate for School Nurse shall (may) be
renewed upon application using "Form TC-2, Application for Certifi-
cate Renewal/Duplicate", incorporated by reference, and upon sub-
mission of proof of the following:
(a) A valid license as a Registered Nurse issued by the Ken-
tucky Board of Nursing;
(b) Three (3) years of experience as a school nurse during the
past five (5) years; and
(c) Either one (1) of the following:
1. Seventy-five (75) contact hours of nursing continuing edu-
cation;
or
2. Nine (9) credit hours of course work from an accredited
college or university related to school nurse practice.

(4) The Professional Certificate for School Nurse shall be is-
issued at Rank II.

Section 4. Requirements for the Advanced School Nurse Cer-
tificate. (1) The Advanced School Nurse Certificate shall be issued
upon application to the Education Professional Standards Board
using Form TC-1.

(2) The Advanced School Nurse Certificate shall be issued
upon application and submission of proof of documentation of com-
pletion of one (1) of the following two (2) options:
(a) Option 1:
1. A valid license as a registered nurse issued by the Kentucky
Board of Nursing;
2. A Bachelor of Science Degree in Nursing; and
3. A Master's Degree in a related field.[1]
(b) Option 2:
1. A valid license as a Registered Nurse issued by the Ken-
tucky Board of Nursing; and
2. A Master’s Degree in Nursing.

(3) The Advanced School Nurse Certificate shall be issued for
an initial period of five (5) years and shall (may) be renewed for
subsequent five (5) year periods upon application and submission
of proof of the following:
(a) A valid license as a registered nurse issued by the Ken-
tucky Board of Nursing;
(b) Three (3) years of experience as a school nurse within the
most recent five (5) year period.

(4) The Advanced School Nurse Certificate shall be issued at
Rank I.

Section 5. Incorporation by Reference. (1) The following mate-
rials is incorporated by reference:
(a) "Form TC-1, Application for Kentucky Certification or
Change in Salary Rate," 10/2006:1; and
(b) "Form TC-2, Application for Certificate Renewal/Duplicate",
10/2003

(2) This material may be inspected, copied, or obtained, sub-
ject to applicable copyright law, at the Education Professional Stan-
dards Board, 100 Airport Road, 3rd Floor, Frankfort, Kentucky
40601, Monday through Friday, 8:00 a.m. to 4:30 p.m. in accordance
with the pertinent Kentucky statutes and administrative regulations
of the State Board of Education to an applicant who is licensed as
a registered nurse (RN) and/or a licensed practical nurse (LPN)
by the Kentucky Board of Nursing, Education and Nurse Registra-
tion and who has completed the approved program of preparation
which corresponds to the certificate at a teacher education institution
approved under the standards and procedures included in the Ken-
avucky State Plan for the Approval of Teacher Education Programs
which correspond to the certificate at a teacher education institution
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TOM STULL, Chair
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EDUCATION PROFESSIONAL STANDARDS BOARD
(As Amended at ARRS, June 13, 2006)

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

RELATES TO: KRS 161.028, 161.030, 164.945-164.947, 20
U.S.C. 1021-1030
STATUTORY AUTHORITY: KRS 161 028, 161.030
NECESSITY, FUNCTION, AND CONFORMITY: KRS
161.028(1) authorizes the Education Professional Standards Board
to establish standards and requirements for obtaining and main-
taining a teaching certificate and for programs of preparation for
teachers and other professional school personnel, and KRS
161.030(1) requires all certificates issued under KRS 161.010 to
161.126 to be issued in accordance with the administrative regu-
lation of the board. [This administrative regulation establishes the
requirements for obtaining and maintaining a school psychologist's
certificate.] This administrative regulation establishes the stan-
dards for accreditation of an educator preparation unit and ap-
proval of a program to prepare an educator.

Section 1. Definitions. (1) "NACTE" means the American Asso-
ciation of Colleges for Teacher Education.
(2) "Biennial report" means the report prepared by the EPSB
summarizing the institutionally-prepared annual reports for a two
year period.
(3) "Board of examiners" means the team who reviews an
institution on behalf of NACTE or EPSB.
(4) "EPSB" means the Education Professional Standards Board.
(5) "NACTE" means the National Council for Accreditation of
Teacher Education.
(6) "NACTE accreditation" means a process for assessing and
enhancing academic and educational quality through voluntary
peer review.
(7) "State accreditation" means recognition by the EPSB that
an institution has a professional education unit that has met ac-
creditation standards as a result of review, including an on-site
team review.

Section 2. Accreditation Requirements. (1) An institution offer-
ing an educator certification program or a program leading to a
rank change:
(a) Shall be accredited by the state; and
(b) May be accredited by NACTE.
(2) State accreditation shall be:
(a) A condition of offering an educator certification program or
a program leading to a rank change; and
(b) Based on the national accreditation standards which in-
clude the program standards enumerated in KRS 161.028(1)(b),
and which are set out in the "Professional Standards for the Ac-
creditation of Schools, Colleges, and Departments of Education"
established by NACTE. The accreditation standards shall include:
1. Standard 1 - Candidate Knowledge, Skills, and Dispositions. Candidate preparing to work in schools as teachers or other profes-
sional school personnel know and demonstrate the content, pedagogical, and professional knowledge, skills, and dispositions
necessary to help all students learn. Assessments indicate that candidates meet professional, state, and institutional standards.
2. Standard 2 - Assessment System and Unit Evaluation. The
unit has an assessment system that collects and analyzes data on
applicant qualifications, candidate and graduate performance, and
unit operations to evaluate and improve the unit and its programs.
3. Standard 3 - Field Experience and Clinical Practice. The unit
and its school partners design, implement, and evaluate field expe-
riences and clinical practice so that teacher candidates and other
school personnel develop and demonstrate the knowledge, skills,
and dispositions necessary to help all students learn.
4. Standard 4 - Diversity. The unit designs, implements, and
evaluates curriculum and experiences for candidates to acquire
and apply the knowledge, skills, and dispositions necessary to help
all students learn. These experiences include working with diverse
higher education and school faculty, diverse candidates, and di-
verse students in P-12 schools.
5. Standard 5 - Faculty Qualifications, Performance, and De-
velopment. Faculty are qualified and model best professional prac-
tices in scholarship, service, and teaching, including the assess-
ment of their own effectiveness as related to candidate performance;
they also collaborate with colleagues in the disciplines and
schools. The unit systematically evaluates faculty performance and
facilitates professional development.
6. Standard 6 - Unit Governance and Resources. The unit has
the leadership, authority, budget, personnel, facilities, and re-
sources including information technology resources, for the prepa-
ration of candidates to meet professional, state, and institutional
standards.
(3) NACTE accreditation shall not be a condition of offering an
educator certification program or a program leading to a rank
change.
(4) All educator preparation institutions and programs operat-
ing in Kentucky that require licensure by the Council on Post-
secondary Education under KRS 164 945-164.947 and 13 KAR
1:020 shall:
(a) Be accredited by the state through the EPSB under this
administrative regulation as a condition of offering an educator
certification program or a program leading to rank change; and
(b) Comply with the EPSB "Accreditation of Preparation Pro-
grams Procedure".

Section 3. Developmental Process for New Educator Prepara-
tion Programs (1) New educator preparation institutions requesting
approval from the EPSB to develop educator preparation programs
that do not have a historical foundation from which to show the
success of candidates or graduates as required under Section 9 of
this administrative regulation shall follow the four (4) stage devel-
velopmental process established in this section to gain temporary
authority to admit candidates.
(2) Stage One:
(a) The educator preparation institution shall submit an official
letter from the chief executive officer and the governing board of
the institution to the EPSB indicating their intent to establish an
educator preparation program.
(b) The EPSB staff shall make a technical visit to the Institu-
tion.
(c) The institution shall submit the following documentation:
1. Program descriptions required by Section 11 of this adminis-
trative regulation;
2. Continuous assessment plan required by Section 11 of this
administrative regulation; and
3. Fulfillment of Preconditions 1, 2, 3, 5, 7, 8, and 9 established
in Section 9 of this administrative regulation.
(d) The EPSB shall provide for a paper review of this docu-
mentation by the Reading Committee and the Continuous As-
essment Review Committee.
(e) Following review of the documentation, EPSB staff shall
make an additional technical visit to the institution.
(3) Stage Two:
(a) A board of examiners team shall make a one (1) day visit to
the institution to verify the paper review,
(b) The team shall be comprised of:
1. One (1) representative from a public postsecondary institu-
tion;
2. One (1) representative from an independent postsecondary
institute; and
3. One (1) representative from the Kentucky Education Asso-
ciation.
(c) The team shall submit a written report of its findings to the
EPSB.
(d) The EPSB shall provide a copy of the written report to the
institute.
(e) The institution may submit a written rejoinder to the report
within thirty (30) working days of its receipt.
2. The rejoinder may be supplemented by materials pertinent to the conclusions found in the team’s report.

1) The Accreditation Audit Committee shall review the materials gathered during Stages One and Two and make one (1) of the following recommendations to the EPSB with regards to temporary authorization:
   1. Approval;
   2. Approval with conditions, or
   3. Denial of approval.

   (4) Stage Three.
   (a) The EPSB shall review the materials and recommendations from the Accreditation Audit Committee and make one (1) of the following determinations with regards to temporary authorization:
   1. Approval;
   2. Approval with conditions; or
   3. Denial of approval.

   (b) An institution receiving approval or approval with conditions shall:
   1. Hold this temporary authorization for two (2) years; and
   2. Continue the developmental process and the first accreditation process established in this administrative regulation.
   (c) An institution denied temporary authorization may reapply.
   (d) During the two (2) year period of temporary authorization, the institution shall:
       1. Admit candidates;
       2. Monitor, evaluate, and assess the academic and professional competency of candidates; and
       3. Report regularly to the EPSB on the institution’s progress.
   (e) During the two (2) year period of temporary authorization, the EPSB:
       1. May schedule additional technical visits; and
       2. Shall monitor progress by paper review of annual reports, admission and exit data, and trend data.

5) Stage Four.
   (a) The institution shall host a first accreditation visit within two (2) years of the approval or approval with conditions of temporary authorization.

   (b) All further accreditation activities shall be governed by the remaining sections of this administrative regulation, which govern the first accreditation of an educator preparation institution.

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

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

3) The EPSB shall annually place a two (2) year schedule of on-site accreditation visits for a Kentucky institution in the agenda materials and minutes of a EPSB business meeting.

4) The EPSB shall coordinate dates for a joint state and NCATE accreditation on-site visit.

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

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

Section 5. Annual Reports. (1)(a) Each institution shall report annually to the EPSB to provide data about:
1. Faculty and student in each approved program;
2. Progress made in addressing areas for improvement identified by its last accreditation evaluation;[1] and
3. Major program developments in each NCATE standard.

(b) An institution seeking accreditation from NCATE and EPSB shall complete the Professional Educator Data System (PEDS) sponsored by AACTE and NCATE and located online at http://www.aacte.org. After the PEDS is submitted electronically, the institution shall print a copy of the completed report and mail it to the EPSB at 100 Airport Road, Frankfort, Kentucky 40601.

2) An institution seeking state-only accreditation shall complete the annual report online at http://www.kyepsb.net/teacherprep/index.asp and submit it electronically to the division contact through the EPSB Web site. The institution shall use the data system identified by the EPSB.

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

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

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

Section 8. Content Program Review Committee. (1) The EPSB shall appoint and train a content program review committee in each of the certificate areas to provide content area expertise to EPSB staff and the Reading Committee.

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

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

(b) A content program review committee shall examine program content and faculty expertise.

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

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

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

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

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

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

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

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

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

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

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

Section 9. Preconditions for First Unit Accreditation. (1) Eighteen (18) months prior to the scheduled on-site visit of the evaluation team, the educator preparation institution shall submit information to the EPSB, and to NCATE if appropriate, documenting the fulfillment of the preconditions for the accreditation of the educator preparation unit, as established in subsection (2).
(2) As a precondition for experiencing an on-site first evaluation for educator preparation, the institution shall present documentation to show that the following conditions are satisfied:
(a) Precondition Number 1. The institution recognizes and identifies a professional education unit that has responsibility and authority for the preparation of teachers and other professional education personnel. Required documentation shall include:
1. A letter from the institution's chief executive officer that designates the unit as having primary authority and responsibility for professional education programs;
2. A chart or narrative that lists all professional education programs offered by the institution, including any nontraditional and alternative programs. The chart or narrative report shall depict:
   a. The degree or award levels for each program;
   b. The administrative location for each program; and
   c. The structure or structures through which the unit implements its oversight of all programs;
3. If the unit's offerings include off-campus programs, a separate chart or narrative as described above, prepared for each location at which off-campus programs are geographically located, and
4. An organizational chart of the institution that depicts the professional education unit and indicates the unit's relationship to other administrative units within the college or university.
(b) Precondition Number 2. A dean, director, or chair is officially designated as head of the unit and is assigned the authority and responsibility for its overall administration and operation. The institution shall submit a job description for the head of the professional education unit.
(c) Precondition Number 3. Written policies and procedures guide the operations of the unit. Required documentation shall include cover page and table of contents for codified policies, bylaws, procedures, and student handbooks.
(d) Precondition Number 4. The unit has a well-developed conceptual framework that establishes the shared vision for a unit's efforts in preparing educators to work in P-12 schools and provides direction for programs, courses, teaching, candidate performance, scholarship, service, and unit accountability. Required documentation shall include:
1. The vision and mission of the school and the unit;
2. The unit's philosophy, purposes, [1] and goals;
3. Knowledge bases including theories, research, the wisdom of practice, and education policies, that inform the unit's conceptual framework;
4. Candidate proficiencies aligned with the expectations in professional, state, and institutional standards; and
5. A description of the system by which the candidate proficiencies described are regularly assessed.
(e) Precondition Number 5. The unit regularly monitors and evaluates its operations, the quality of its offerings, the performance of candidates, and the effectiveness of its graduates. Required documentation shall include a description of the unit's assessment and data collection systems that support unit responses to Standards 1 and 2 established in Section 2(2)(b)1 and 2 of this administrative regulation.

(f) Precondition Number 6. The unit has published criteria for admission to and exit from all initial teacher preparation and advanced programs and can provide summary reports of candidate performance at exit. Required documentation shall include:
1. A photocopy of published documentation (e.g., from a catalog, student teaching handbook, application form, or web page) listing the basic requirements for entry to, retention in, and completion of professional education programs offered by the institution, including any nontraditional, alternative and off-campus programs; and
2. A brief summary of candidate performance on assessments conducted for admission into programs and exit from them. This summary shall include:
   a. The portion of Title II documentation related to candidate admission and completion that was prepared for the state; and
   b. A compilation of results on the unit's own assessments.
(g) Precondition Number 7. The unit's programs are approved by the appropriate state agency or agencies and the unit's summary pass rates meets or exceeds the required state pass rate of eighty (80) percent. Required documentation shall include:
1. The most recent approval letters from the EPSB and CPE, including or appended by a list of approved programs. If any program is not approved, the unit shall provide a statement that it is not currently accepting new applicants into the nonapproved program or programs. For programs that are approved with qualifications or are pending approval, the unit shall describe how it will bring the program or programs into compliance; and
2. Documentation submitted to the state for Title II, indicating that the unit's summary pass rate on state licensure examinations meets or exceeds the required state pass rate of eighty (80) percent. If the required state pass rate is not evident on this documentation, it shall be provided on a separate page.
(h) Precondition Number 8. If the institution has chosen to pursue dual accreditation from both the state and NCATE and receive national recognition for a program or programs, the institution shall submit its programs for both state and national review.
(i) Precondition Number 9. The institution is accredited, without probation or an equivalent status, by the appropriate regional institutional accrediting agency recognized by the U.S. Department of Education. Required documentation shall include a copy of the current regional accreditation letter or report that indicates institutional accreditation status.

Section 10. Institutional Report. (1) For a first accreditation visit, the educator preparation unit shall submit, two (2) months prior to the scheduled on-site visit, a written narrative describing the unit's conceptual framework and evidence that demonstrates that the six (6) standards are met. The written narrative may be supplemented by a chart, graph, diagram, table, or other similar means of presenting information. The institutional report, including appendices, shall not exceed 100 pages in length. The report shall be submitted to the EPSB and to NCATE, if appropriate.
(2) For a continuing accreditation visit, the educator preparation unit shall submit, two (2) months prior to the scheduled on-site visit, a report not to exceed 100 pages addressing changes at the institution that have occurred since the last accreditation visit, a description of the unit's conceptual framework, and evidence that demonstrates that the six (6) standards are met. The narrative shall describe how changes relate to an accreditation standard and the results of the continuous assessment process, including program evaluation. The report shall be submitted to the EPSB and to NCATE, if appropriate.

Section 11. Program Review Documents. Eighteen (18) months for first accreditation and twelve (12) months for continuing accreditation in advance of the scheduled on-site evaluation visit, the educator preparation unit shall prepare and submit to the EPSB for each separate program of educator preparation for which the institution is seeking approval a concise description which shall provide the following information:
(1) The unit's conceptual framework for the preparation of school personnel which includes:
   a. The mission of the institution and unit;
   b. The unit's philosophy, purposes, professional commit-
ments, and dispositions;
(c) Knowledge bases, including theories, research, the wisdom of practice, and education policies;
(d) Performance expectations for candidates, aligning the expectations with professional, state, and institutional standards; and
(e) The system by which candidate performance is regularly assessed;
(2) The unit's continuous assessment plan that provides:
(a) An overview of how the unit will implement continuous assessment to assure support and integration of the unit's conceptual framework;
(b) Each candidate's mastery of content prior to exit from the program, incorporating the assessment of the appropriate performance standards;
(c) Assessment of the program that includes specific procedures used to provide feedback and make recommendations to the program and unit, and
(d) A monitoring plan for candidates from admission to exit;
(3) Program experiences including the relationship among the program's courses and experiences, content standards of the relevant national specialty program associations (e.g., National Council of Teachers of Mathematics, National Council for the Social Studies, The Council for Exceptional Children, North American Association for Environmental Education, etc.), student academic expectations as established in 703 KAR 4:060, and relevant state performance standards established in 16 KAR 1:010 or incorporated by reference into this administrative regulation including:
(a) NCATE Unit Standards;
(b) Kentucky's Safety Educator Standards for Preparation and Certification;
(c) National Association of School Psychologists, Standards for School Psychology Training Programs, Field Placement Programs, Credentialing Standards; and
(d) Kentucky's Standards for Guidance Counseling Programs;
(4)(a) Identification of how the program integrates the unit's continuous assessment to assure each candidate's mastery, prior to exit from the program, of content of the academic discipline, and state performance standards as established in 16 KAR 1:010, and
(b) Identification of how the program utilizes performance assessment to assure that each candidate's professional growth is consistent with the New and Experienced Teacher Standards as established in 16 KAR 1:010;
(5) A list of faculty responsible for and involved with the conduct of the specific program, along with the highest degree of each, responsibilities for the program, and status of employment within the unit and the university, and
(6) A curricular guide sheet or contract provided to each student before or at the time of admittance to the program.

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

Section 13. Assembly of Records and Files for the Evaluation Team. For convenient access, the institution shall assemble, or make available, records and files of written materials which supplement the institutional report and which may serve as further documentation. The records and files shall include:
(1) The faculty handbook;
(2) Agenda, list of participants, and products of a meeting, workshop, or training session related to a curriculum and governance group impacting professional education;
(3) Faculty vitae or resumes;
(4) A random sample of graduates' transcripts,
(5) Conceptual framework documents;
(6) A curriculum program, rejoinder, or specialty group response that was submitted as a part of the program review process;
(7) Course syllabi,
(8) Policies, critea and student records related to admission and retention;
(9) Samples of students' portfolios and other performance assessments;
(10) Record of performance assessments of candidate progress and summary of results including a program change based on continuous assessment;
(11) Student evaluations, including student teaching and internship performance; and
(12) Data on performance of graduates, including results of state licensing examinations and job placement rates.

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

Section 15. On-site Accreditation Visit. (1) At least one (1) staff member of the EPSB shall be assigned as support staff and liaison during the accreditation visit
(2) The EPSB shall reimburse a state team member for travel,
lodging, and meals in accordance with 200 KAR 2:006. A team member representing NCATE shall be reimbursed by the educator preparation institution.

(3) The evaluation team shall conduct an on-site evaluation of the self-study materials prepared by the institution and seek out additional information, as needed, to make a determination as to whether the standards were met for the accreditation of the institution's educator preparation unit and for the approval of an individual educator preparation program. The evaluation team shall make use of the analyses prepared through the preliminary review process.

(4) An off-campus site which offers a self-standing program shall require a team review. If additional team time is required for visiting an off-campus site, the team chair, the Institution, and the EPSB shall negotiate special arrangements.

(5) In a joint team, all Board of Examiners members shall vote on whether the educator preparation institution has met the six (6) NCATE standards. A determination about each standard shall be limited to the following options:
   (a) Met;
   (b) Met, with one (1) or more defined areas for improvement; or
   (c) Not met.
   (6)(a) The Board of Examiners shall review each program and cite the areas for improvement for each, if applicable.
   (b) The Board of Examiners shall define the areas for improvement in its report.
   (7) The processes established in subsections (5) and (6) of this section shall be the same for first and continuing accreditation.
   (8) The on-site evaluation process shall end with a brief oral report:
      (a) By the NCATE team chair and state team chair for a Joint state/NCATE visit; or
      (b) By the state team chair for a state-only visit.

Section 16. Preparation and Distribution of the Evaluation Report. (1) For a state-only visit, the evaluation report shall be prepared and distributed as follows:
   (a) The EPSB staff shall collect the written evaluation pages from each Board of Examiners member before leaving the institution.
   (b) The first draft shall be typed and distributed to Board of Examiners members.
   (c) A revision shall be consolidated by the Board of Examiners chair who shall send the next draft to the unit head to review for factual accuracy.
   (d) The unit head shall submit written notification to the EPSB confirming receipt of the draft.
   (e) The unit head shall submit to the EPSB and Board of Examiners chair within ten (10) [five (5)] working days either:
      1. A written correction to the factual information contained in the report;
      2. Written notification that the unit head has reviewed the draft and found no factual errors.
   (f) The Board of Examiners chair shall submit the final report to the EPSB and a copy to each member of the Board of Examiners.
   (g) The final report shall be printed by the EPSB and sent to the Institution and to the Board of Examiners members within thirty (30) to sixty (60) working days of the conclusion of the on-site visit.
   (2) For a joint state/NCATE visit, the evaluation report shall be prepared and distributed as follows:
      (a) The NCATE chair shall be responsible for the preparation, editing and corrections to the NCATE report.
      (b) The state chair shall be responsible for the preparation, editing and corrections of the state report in the same manner established in subsection (1) of this section for a state-only visit.
      (c) The EPSB Board of Examiners report for state/NCATE continuing accreditation visits shall be prepared in accordance with the Board of Examiners Report Format for State/NCATE Accreditation Visits.

Section 17. Institutional Response to the Evaluation Report. (1)(a) The institution shall acknowledge receipt of the evaluation report within thirty (30) working days of receipt of the report.
   (b) If desired, the institution shall submit within thirty (30) working days of receipt of the report a written rejoinder to the report which may be supplemented by materials pertinent to a conclusion found in the evaluation report.
   (c) The rejoinder and the Board of Examiners report shall be the primary documents reviewed by the Accreditation Audit Committee and EPSB.
   (d) An unmet standard or area of improvement statement cited by the team may be recommended for change or removal by the Accreditation Audit Committee or by the EPSB because of evidence presented in the rejoinder. The Accreditation Audit Committee or the EPSB shall not be bound by the Board of Examiners decision and may reach a conclusion different from the Board of Examiners or NCATE.
   (2) If a follow-up report is prescribed through accreditation with conditions, the institution shall follow the instructions that are provided with the follow-up report.
   (3) If the institution chooses to appeal a part of the evaluation results, the procedures established in Section 22 of this administrative regulation shall be followed.
   (4) The institution shall make an annual report relating to the unit for educator preparation and relating to the programs of preparation as required by Section 5 of this administrative regulation.

Section 18. Accreditation Audit Committee. (1) The Accreditation Audit Committee shall be a committee of the EPSB, and shall report to the full EPSB. The EPSB shall appoint the Accreditation Audit Committee as follows:
   (a) One (1) lay member;
   (b) Two (2) classroom teachers, appointed from nominees provided by the Kentucky Education Association;
   (c) Two (2) teacher education representatives, one (1) from a state-supported institution and one (1) from an independent educator preparation institution, appointed from nominees provided by the Kentucky Association of Colleges for Teacher Education; and
   (d) Two (2) school administrators appointed from nominees provided by the Kentucky Association of School Administrators.
   (2) The chairperson of the EPSB shall designate a member of the Accreditation Audit Committee to serve as its chairperson.
   (3) An appointment shall be for a period of four (4) years except that three (3) of the initial appointments shall be for a two (2) year term. A member may serve an additional term if renominated and reappointed in the manner established for membership. A vacancy shall be filled as it occurs in a manner consistent with the provisions for initial appointment.
   (4) A member of the Accreditation Audit Committee shall be trained by NCATE or in NCATE-approved training.
   (5) Following an on-site accreditation visit, the Accreditation Audit Committee shall review the reports and materials constituting an institutional self-study, the report of the evaluation team, and the institutional response to the evaluation report. The committee shall then prepare a recommendation for consideration by the EPSB.
   (a) The committee shall review the procedures of the Board of Examiners to determine whether approved accreditation guidelines were followed.
   (b) For each institution, the committee shall make a recommendation with respect to the accreditation of the institutional unit for educator preparation as well as for approval of the individual programs of preparation.
   (c) For first accreditation, one (1) of four (4) recommendations shall be made:
      1. Accreditation;
      2. Provisional accreditation;
      3. Denial of accreditation; or
      4. Revocation of accreditation.
   (d) For regular continuing accreditation, one (1) of four (4) recommendations shall be made:
      1. Accreditation;
      2. Accreditation with conditions;
      3. Accreditation with probation; or
      4. Revocation of accreditation.
   (6) For both first and continuing accreditation, the Accreditation Audit Committee shall review each program report including a report from the Reading Committee, Board of Examiners team, and
institutional response and shall make one (1) of three (3) recommendations for each individual preparation program to the EPSB:
(a) Approval;
(b) Approval with conditions; or
(c) Denial of approval.
(7) The Accreditation Audit Committee shall compile accreditation data and information for each Kentucky Institution that prepares school personnel. It shall prepare for the EPSB reports and recommendations regarding accreditation standards and procedures as needed to improve the accreditation process and the preparation of school personnel.

Section 19. Official State Accreditation Action by the Education Professional Standards Board. (1) A recommendation from the Accreditation Audit Committee shall be presented to the full EPSB.
(2) The EPSB shall consider the findings and recommendations of the Accreditation Audit Committee and make a final determination regarding the state accreditation of the educator preparation unit.
(3) Decision options following a first accreditation visit shall include:
(a) Accreditation.
1. This accreditation decision indicates that the unit meets each of the six (6) NCATE standards for unit accreditation. Areas for improvement may be cited, indicating problems warranting the institution's attention. In its subsequent annual reports, the professional education unit shall be expected to describe progress made in addressing the areas for improvement cited by the EPSB's action report.
2. The next on-site visit shall be scheduled five (5) years following the semester of the visit;
(b) Provisional accreditation.
1. This accreditation decision indicates that the unit has not met one (1) or more of the NCATE standards. The unit has an accredited status but shall satisfy provisions by meeting each previously unmet standard. EPSB shall require submission of documentation that addresses the unmet standard or standards within six (6) months of the accreditation decision, or shall schedule a visit focused on the unmet standard or standards within two (2) years of the semester that the accreditation with conditions decision was granted. If the EPSB decides to require submission of documentation, the institution may choose to waive that option in favor of the focused visit within two (2) years. Following the focused visit, the EPSB shall decide to:
   a. Continue accreditation; or
   b. Revoke accreditation.
2. If the EPSB renders the decision to continue accreditation, the next on-site visit shall be scheduled for seven (7) (five-six) years following the semester in which the continuing accreditation visit occurred;
(c) Accreditation with probation.
1. This accreditation decision indicates that the unit has not met one (1) or more of the NCATE standards and has pervasive problems that limit its capacity to offer quality programs that adequately prepare candidates. As a result of the continuing accreditation review, the EPSB has determined that areas for improvement with respect to standards may place an institution's accreditation jeopardy if left uncorrected. The institution shall schedule an on-site visit within two (2) years of the semester in which the probationary decision was rendered. This visit shall mirror the process for first accreditation. The unit as part of this visit shall address all NCATE standards in effect at the time of the probationary review at the two (2) year point. Following the on-site review, the EPSB shall decide to:
   a. Continue accreditation; or
   b. Revoke accreditation.
2. If accreditation is continued, the next on-site visit shall be scheduled for five (5) years after the semester of the probationary visit;
(d) Revocation of accreditation. Following a comprehensive site visit that occurs as a result of an EPSB decision to accredit with conditions or to accredit without conditions, this accreditation decision indicates that the unit does not meet one (1) or more of the NCATE standards, and has pervasive problems that limit its capacity to offer quality programs that adequately prepare candidates. Accreditation shall [may] be revoked if the unit:
   1. No longer meets preconditions to accreditation, such as loss of state approval or regional accreditation;
   2. Misrepresents its full accreditation status to the public;
   3. Falsely reports data or plagiarized information submitted for accreditation purposes;
   4. Fails to submit annual reports or other documents required for accreditation.
(5) Notification of EPSB action to revoke continuing accreditation or deny first accreditation, including failure to remove conditions, shall include notice that:
   a. The institution shall inform students currently admitted to a certification or rank program of the following:
      1. A student recommended for certification or advancement in rank within the twelve (12) months following the denial or revocation of state accreditation and who applies to the EPSB;
      2. An institution for which the EPSB has denied or revoked accreditation shall seek state accreditation through completion of the first accreditation process. The on-site accreditation visit shall be scheduled by the EPSB no earlier than two (2) years following the EPSB action to revoke or deny state accreditation.

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

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

(3) A recommendation made pursuant to subsection (2) of this section shall be presented to the full EPSB.

(4) Program approval decision options shall be:
(a) Approval, with the next review scheduled during the regular accreditation cycle unless a substantial revision is made;
(b) Approval with conditions, with a maximum of one (1) year probationary extension for correction of a specified problem to be determined through written materials or through an on-site visit. At the end of the extension, the EPSB shall decide that the documentation supports:
   1. Approval;
   2. Denial of approval;
   (c) Denial of approval, indicating that a serious problem exists which jeopardizes the quality of preparation of school personnel
   5. The EPSB shall order review of a program if it has cause to believe that the quality of preparation is seriously jeopardized. The review shall be conducted under the criteria and procedures established in the EPSB *Emergency Review of Certification Programs Procedure* policy incorporated by reference. The on-site review shall be conducted by EPSB staff and a Board of Examiners team. The review shall result in a report to which the institution may respond. The response and institutional recommendations shall be used by the Executive Director of the EPSB [Accreditation-Audit Committee] as the basis for a recommendation to the full EPSB for:
   (a) Approval;
   (b) Approval with conditions; or
   (c) Denial of approval for the program.

(6) If the EPSB denies approval of a program, the institution shall notify each student currently admitted to that program of the EPSB action. The notice shall include the following information:
(a) A student recommended for certification or advancement in rank within the twelve (12) months immediately following the denial of state approval and who applies to the EPSB within the fifteen (15) months immediately following the denial of state approval shall receive the certification or advancement in rank;
(b) A student who does not meet the criteria established in paragraph (a) of this subsection shall transfer to a state approved program in order to receive the certification or advancement in rank.

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

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

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

Section 22. Appeals Process. (1) If an institution seeks appeal of a decision, the institution shall appeal within thirty (30) days of receipt of the EPSB official notification. An institution shall appeal on the grounds that:
(a) A prescribed standard was disregarded;
(b) A state procedure was not followed; or
(c) Evidence of compliance in place at the time of the review and favorable to the institution was not considered.

(2) An ad hoc appeals board of no fewer than three (3) members shall be appointed by the EPSB chair from members of the Board of Examiners who have had no involvement with the team visit or a conflict of interest regarding the institution. The ad hoc committee shall recommend action on the appeal to the EPSB.

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

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

(2) The EPSB shall consider a waiver request upon request of the institution offering the alternative route program. The request shall be submitted in writing no later than thirty (30) days prior to the next regularly-scheduled EPSB meeting. In granting the waiver, the board shall consider the provisions of this administrative regulation and any information presented that supports a determination of undue restriction [may waive any section or part thereof of this administrative regulation that the EPSB determines is unduly restrictive to the development and implementation of the alternative route program].

Section 24. In compliance with the Federal Title II Report Card State Guidelines established in 20 U.S.C. 1027 and 1028, the EPSB shall identify an educator preparation unit as:
(1) "At risk of low performance" if an educator preparation program has received a,
   (a) State accreditation rating of "provisional";
   (b) State accreditation rating of "accreditation with conditions";
   (c) Quality Performance Index of "At Risk of Low Performance [Performance]" established in Section 25 of this administrative regulation;
   (2) "Low performing" if an educator preparation program has received a,
   (a) State accreditation rating of "accreditation with probation";
   (b) Quality Performance Index of "Low Performance [Performance]" established in Section 25 of this administrative regulation.

Section 25. The Education Professional Standards Board shall produce a state report card, which shall include:
(1) General information on the institution and the educator preparation unit;
(2) Contact information for the person responsible for the educator preparation unit;
(3) Type or types of accreditation the unit holds;
(4) Current state accreditation status of the educator preparation unit;
(5) Year of last state accreditation visit and year of next scheduled visit;
(6) Table of the unit's approved certification program or programs;
(7) Tables relating the unit's total enrollment disaggregated by ethnicity and gender for last three (3) years;
(8) Tables relating the unit's faculty disaggregated by FTE, ethnicity, and gender for last three (3) years;
(9) Table of the number of program completers (teachers and administrators) for the last three (3) years;
(10) Table relating pass rates on the required assessments;
(11) Table relating pass rates for Kentucky Teacher Internship Program;
(12) Table relating pass rates for Kentucky Principal Internship Program (if applicable);
(13) Table indicating student teacher satisfaction with preparation program;
(14) Table relating teacher intern satisfaction with preparation program;
(15) Table relating new teacher (<3 years) and supervisor satisfaction with preparation program;
(16) Table aggregating quality performance indicators established in this section and the standards established in Section 2 of this administrative regulation;

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(17) Hyperlinks to various supporting documents; and
(18) A Quality Performance Index (QPI) for each educator preparation unit. The Quality Performance Index shall comply with the provisions established in this subsection.
(a) The Quality Performance Index shall provide an indicator of the overall performance of the educator preparation unit.
(b) The Quality Performance Index shall be a calculation of three (3) separate performance measures:
1. Annual summary PRAXIS II pass rate;
2. Overall mean score on the Kentucky Educator Preparation Program new teacher survey; and
3. Three (3) year average pass rate on the Kentucky Teacher Internship Program.
   (c) Performance points shall be assigned to the outcome of each of the three (3) performance measures and each multiplied by specific performance weights.
   2. The sum of the product shall be divided by the sum of the performance weights.
3. The resulting quotient shall produce the Quality Performance Index.
   (d) The Quality Performance Index shall be divided into four (4) performance categories:
   1. A score of 4.00 to 3.50 shall indicate "Excellent Performance";
   2. A score of 3.49 to 3.00 shall indicate "Satisfactory Performance";
   3. A score of 2.99 to 2.75 shall indicate "At Risk of Low Performance" and shall identify the educator preparation unit as "at risk of low performance" in accordance with 20 U.S.C. 1027 and 1028 and Section 24 of this administrative regulation; and
   4. A score of less than 2.75 shall indicate "Low Performance" and shall identify the educator preparation unit as "low performance" in accordance with 20 U.S.C. 1027 and 1028 and Section 24 of this administrative regulation.
   (e) The performance points and performance weights are established in the "Quality Performance Index Calculation" document incorporated by reference.

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

Section 27. Incorporation by Reference. (1) The following materials are incorporated by reference:
(a) "Professional Standards for the Accreditation of Schools, Colleges, and Departments of Education", 2002 Edition, National Council for Accreditation of Teacher Education;
(b) NCATE Unit Standards (2002 Edition), National Council for Accreditation of Teacher Education;
(c) "Education Professional Standards Board Accreditation of Preparation Programs Procedure", August 2002;
(d) "Education Professional Standards Board Approval of Alternative Route to Certification Program Offered under KRS 161.028", August 2002;
(e) "Education Professional Standards Board Emergency Review of Certification Programs Procedure", September 2003; and
(f) "Quality Performance Index Calculation", 2005 edition, Education Professional Standards Board,
(g) "Kentucky's Safety Educator Standards for Preparation and Certification", May 2004;
(h) "National Association of School Psychologists, Standards for School Psychology Training Programs, Field Placement Programs, Credentialing Standards", July 2000; and
(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Education Professional Standards Board, 100 Airport Road, 3rd Floor, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4 30 p.m.
TOM STULL, Chair
APPROVED BY AGENCY: April 13, 2005
FILED WITH LRC: April 13, 2005 at 3 p.m.
CONTACT PERSON: Brenda Dinkins Allen, Education Professional Standards Board, 100 Airport Road, 3rd Floor, Frankfort, Kentucky 40601, phone (502) 564-4606, fax (502) 564-7080.

EDUCATION PROFESSIONAL STANDARDS BOARD
(As Amended at ARES, June 13, 2006)


RELATED TO. KRS 161.020, 161.027, 161.030
STATUTORY AUTHORITY: KRS [566.0704] 161.027
NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.020 requires a certificate of legal credentials for any public school position for which a certificate is issued. KRS 161.027 requires the Education Professional Standards Board to develop or select appropriate tests, establish minimum scores for successful completion, and establish a reasonable fee to be charged for actual cost of administration of the tests, for an applicant seeking certification as a principal, and further requires that each applicant for certification as school principal with less than two (2) years of appropriate experience complete a one (1) year internship program developed by the Education Professional Standards Board. This administrative regulation establishes the examination requirements for certification as principal required under KRS 161.027.

Section 1. (1) The certificate for school principal shall be valid for serving in the position of principal or assistant principal. A new applicant for certification as a school principal, including vocational school principal, shall successfully complete the prerequisite tests specified in Section 2 of this administrative regulation prior to certification as a school principal. A score on a test completed more than five (5) years prior to application for certification shall not be acceptable.
(2) In addition to the examination requirement specified in Section 2 of this administrative regulation, an applicant for certification shall successfully complete a one (1) year internship program if the applicant has had less than two (2) years of successful experience as a principal in another state.

Section 2. An applicant for certification as principal shall complete the following tests and attain the minimum score specified for each test:
(1) School Leaders Licensure Assessment [established] - 165
(2) Kentucky Specialty Test of Instructional and Administrative Practices - eighty-five (85) percent correct responses.

Section 3. The requirement to successfully complete the School Leaders Licensure Assessment shall not be required [be waived] for an applicant who has:
(1) Two (2) years of experience as a certified principal in another state; and
(2) Successfully completed a nationally administered test in the area of educational leadership and administration.

Section 4. (1) An applicant for certification as principal shall take the required School Leaders Licensure Assessment on a date established by the ETS. An applicant shall authorize that test results be forwarded to the Education Professional Standards Board or the ETS.
(2) An applicant for certification as principal shall take the Kentucky Specialty Test of Instructional and Administrative Practices on a date established by the Education Professional Standards Board. Scoring and reporting of scores shall be the responsibility of the Education Professional Standards Board or its designated agent.
(3) Public announcement of a testing date and location shall be issued sufficiently in advance to permit registration as required by the ETS and the Education Professional Standards Board.
(4) An applicant shall seek information regarding the dates and
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location of the test and make application for the appropriate examination prior to the deadline established and sufficiently in advance of anticipated employment to permit test results to be received by the Education Professional Standards Board and processed in the normal certification cycle.

Section 5. (1) For the required School Leaders Licensure Assessment, the applicant shall pay all fees assessed by the ETS.
(2) For the Kentucky Specialty Test of Instructional and Administrative Practices, an [and] applicant shall pay a fee of:
(a) Thirty ($30) dollars if the test is taken before September 1, 2004; or
(b) eighty ($80) dollars if the test is taken on or after September 1, 2004.

Section 6. An applicant who fails to achieve a minimum score on a required test as specified in Section 2 of this administrative regulation shall be permitted to retake the test or tests during a regularly-scheduled test administration.

Section 7. A temporary certificate issued in accordance with KRS 161.027(6)(a) shall not be extended for an applicant who does not successfully complete the assessments within the year.

Section 8. (1) For an applicant applying for a certificate under KRS 161.027(6)(b), the school superintendent of the employing district shall submit a request that shall include an affirmation that the applicant pool consisted of three (3) or less applicants who met the requirements for selecting a principal.
(2) Upon successful completion of the assessments and the principal internship, a certificate shall be issued for an additional four (4) years.
(3) The temporary certificate issued in accordance with KRS 161.027(5)(b) shall not be extended beyond the one (1) year period.

Section 9. (1) To provide for confidentiality of information, the Education Professional Standards Board shall report individual scores on the Kentucky Specialty Test of Instructional and Administrative Practices to the individual applicant. The scores shall not be released to other individuals or agencies.
(2) A score shall not be used by the Education Professional Standards Board in an individually identifiable form other than for purposes of determining eligibility for certification as school principal.

Section 10. On an annual or biannual basis, the Education Professional Standards Board shall collect and analyze data provided by the Educational Testing Service through score and institution reports which permit evaluation of the examination prerequisites covered by this administrative regulation.

TOM STULL, Chair
APPROVED BY AGENCY: April 13, 2006
FILED WITH LRC: April 14, 2006 at 10 a.m.
CONTACT PERSON: Brenda Dinkens Allen, Education Professional Standards Board, 100 Airport Road, 3rd Floor, Frankfort, Kentucky 40601, phone (502) 564-4606, fax (502) 564-7080.

STATE BOARD OF ELECTIONS
(As Amended at ARRS, June 13, 2006)


RELATES TO: KRS 39A.100, 117.045, 117.065, 117.065, 117.165, 117.187, 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 area [district]" means an election area [district] for which a state of emergency has been declared for all or part of an election area [district] as specifically described by the Governor in an executive order issued pursuant to KRS 39A.100(1)(k).
(4) "Elections Emergency Contingency Plan" means the procedures established by this administrative regulation for election officials to follow if an election has been suspended or delayed pursuant to KRS 39A.100(1)(k) through the Governor's executive order.
(5) "Precinct election office" 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.
(6) "Voting place" means a place for voting established in accordance with the provisions of KRS 117.065.

Section 2. General Provisions. (1) Election officials shall follow the Elections Emergency Contingency Plan as specifically mandated by this administrative regulation in accordance with the Governor's [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 116 to 121A, shall be applicable to an election conducted pursuant to the Elections Emergency Contingency Plan [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.
(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, in accordance with KRS 117.187, 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 [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 area [district] 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) Establish new voting places, if 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 117.085(1)(c); and
(b) Secure all voting machines being used for absentee voting until absentee voting may be resumed in accordance with KRS 117.085(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 117.085(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 delayed 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 count 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 deposit 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.

Wages, Salary, and Other Income*, shall be presented to an employer for the purpose of releasing a wage levy.

(19) [631] Revenue Form 12A200, "Kentucky Individual Income Tax Installment Agreement Request", shall be used by a taxpayer requesting to pay Kentucky tax liability in installments.

(20) [632] 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.

(21) [633] Revenue Form 12A501, "Certificate of Subordination of Kentucky Revenue Tax Lien", shall be presented to anyone who makes proper application for a lien release on a new mortgage and demonstrates that the subordination is in the Commonwealth's best interest.

(22) [634] 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.

(23) [635] 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.

(24) [636] 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.

(25) [637] 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.

(26) [638] 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.

(27) [639] 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.

(28) [640] 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.

(29) [641] 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 non-payment or filing of taxes owed to the Commonwealth.

(30) [642] Revenue Form 12A510, "Guidelines for Wage Levy Processing", shall be presented to employers to explain how to process a wage levy on an employee.

(31) [643] Revenue Form 12A511, "Guidelines for Bank Levy Processing", shall be presented to banks to explain how to process a bank levy.

(32) [644] 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.

(33) [645] 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.

(34) [646] 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.

(35) [647] Revenue Form 12A515, "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.

(36) [648] 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.

(37) [649] 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.

(38) [650] 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 payment of delinquent taxes.

(39) [651] Revenue Form 12A538, "Statement of Financial Condition for Individuals[and Instructuon]*, 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.

(40) [652] Revenue Form 12A539, "Instructions for Completing Statement of Financial Condition for Individuals", shall provide [specify] instructions for completing Revenue Form 12A538.

(41) [653] Revenue Form 12A539, "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.

(42) [654] Revenue Form 12A539, "Instructions for Completing Statement of Financial Condition for Businesses", shall provide [specify] instructions for completing Revenue Form 12A539.

(43) [655] 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.

(44) [656] Revenue Form 12B020, "Notice of Levy", shall be presented to banks for the purpose of levying bank accounts of taxpayers who owe taxes to the Kentucky Department of Revenue.

(45) [657] 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.

(46) [658] Revenue Form 21A050, "Business Account Numbers", shall be issued to business taxpayers to confirm processing of the Kentucky Tax Refund Check. If an 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.

(47) [659] 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.

(48) [660] Revenue Form 31A004, "Auditor Record of Money Recipient 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.

(49) [661] Revenue Form 31A010, "Sales Tax and Electronic Data Questionnaire", shall be used to ascertain the capability of taxpayer's records to facilitate audit through use of electronic data.

(50) [662] 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.

(51) [663] 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.

(52) [664] Revenue Form 31A149, "Agreement Fixing Period
of Limitation Upon Assessment of Sales, Use or Severance Tax, shall be completed by a taxpayer and a representative of the Kentucky Department of Revenue whereby both parties consent and agree that certain sales, use or severance tax deficiencies or over-payments for specific periods may be assessed or refunded beyond the normal four year statute of limitations. Revenue Form 31A865, "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.

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

Revenue Form 42F102, "Large Employer Program Electronic File Fact Sheet", shall provide employers with information on the "ELP" 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 into Kentucky through the United States Bureau of 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, wholesale sales tax and case 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 consignors 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 government officials to certify quantities of taxed 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 winners 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 73A626, "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 73A627, "Beer Distributor's Monthly Report", shall be used by beer distributors to report shipments of malt beverages received during the previous month.

(13) Revenue Form 73A628, "Distiller's Monthly Malt Beverage Excise Tax and Wholesale Sales Tax Report", shall be used by distributors of malt beverages to report liability for malt beverage excise tax and wholesale sales tax.

(14) Revenue Form 73A629, "Beer Distributor's Sales to Federal Agencies", 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 73A600, "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 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 interested in acting as a cigarette wholesaler, subbother, vending machine operator, transporter, 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 73A405, "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 Cigarettes Sold in Kentucky", shall be used by a licensed cigarette wholesaler to report cigarette inventory, tax stamp reconciliation, and liability for cigarette administration and enforcement fees 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 73A440, "Instructions for Monthly Report of Cigarette Wholesaler" shall be used by cigarette wholesalers and nonparticipating manufacturers to file Revenue Form 73A420.

(8) Revenue Form 73A441, "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 73A442, "Monthly Report of Other Tobacco Products and Snuff", shall be used by licensees to report gross receipts from other tobacco products, total units of snuff sold, and tax liability.

(10) Revenue Form 73A450, "Cigarette Tax Credit Claim Wholesaler's Affidavit", shall be signed by a licensed cigarette wholesaler attesting that the reported tax evidence did not have the 270 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 both] within and without of Kentucky to apportion and allocate net income to Kentucky in accordance with KHS 141.120.

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

(4) Revenue Form 41A720-CI, "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 Construction Sheet", shall be used by a taxpayer whose common parent is a C corporation filing a consolidated return.

(7) 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) [66] 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 154.45-100.

(9) [73] 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 Credit Certificate of Income Tax Credit Biodiesel", shall be used by taxpayers claiming a Biodiesel tax credit.

(11) Revenue Form 41A720BIO-K1, "Schedule BIO-K1, Distributive Share of Approved Biodiesel and/or Blended Biodiesel Tax Credit", shall be used by a general partnership to report the distributive share of Biodiesel Tax Credit to general partners.

(12) Revenue Form 41A720KR, "Schedule KCR, 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 Construction Sheet", shall be used by [61] 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 (Brownfield/Brownfields)", shall be used by an entity claiming a tax credit provided by KRS 141.0405.

(16) Revenue Form 41A720VERB-K1, "Schedule VERB-K1, 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) Expenditure Summary Schedule", shall be used by a taxpayer to list the expenditures incurred in complying with voluntary environmental remediation property.


(19) [66] Revenue Form 41A720QR, "Schedule QR, 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) [19] Revenue Form 41A720QR-C, "Schedule QR (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 or partner's share of income tax credit for qualified costs of research facilities.

(21) [44] 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, fiduciaries, and partnerships to list additional equipment for which approval of the credit allowed by KRS 141.390 is being requested.

(22) [44] Revenue Form 41A720RC-C, "Schedule RC - Part I Continuation", shall be used by individuals, corporations, fiduciaries, and partnerships to list additional equipment for which approval of the credit allowed by KRS 141.390 is being requested.

(23) Revenue Form 41A720RC-II, "Revenue Form 41A720RC[II], Instructions for Schedule RC, shall be used by taxpayers requesting approval of a recycling, composting equipment, [real] or major recycling project.

(24) Revenue Form 41A720RC-K1, "Schedule RC-K1, 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 or partner their pro rata or distribute share of approved income tax credit for the purchase and installation of recycling or composting equipment. This form shall also be used by shareholders or 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-I, "Schedule RC-R-I, 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) [44] Revenue Form 41A720S, "Form 720S, 2005 [2004] Kentucky Corporation Income [and-Licensee] Tax Return", shall be used by S corporations to determine the amount of income tax due or refundable, for the year ending [2004] [2003], and to determine total shareholders' shares of income, (grosses), credits, deductions, etc. for tax years beginning in 2005.

(28) [2005] This form shall also be used to determine the S corporation's income tax liability in accordance with KRS 141.0406, as applicable, and to determine license tax due in accordance with KRS 146.070.

(29) Revenue Form 41A720S1, "2005 [2004] Kentucky Corporation Income [and-Licensee] Tax Forms and Instructions", shall provide [packet, provide] in a single packet Form 720S, Kentucky Corporation Income [and-Licensee] Tax Return, other forms commonly used by corporations in conjunction with Form 720S and instructions for filing these forms. The packet shall also contain [also contain] [Revenue Form 62A, Kentucky Intangible Property Tax Return, and a brochure entitled "Your Rights as a Kentucky Taxpayer".

(30) [46] Revenue Form 41A720S2, "2005 [2004] Kentucky Corporation Income [and-Licensee] Tax Forms and Instructions", shall provide [packet, provide] in a single packet Form 720S, Kentucky Corporation Income [and-Licensee] Tax Return, other forms commonly used by S corporations in conjunction with Form 720S and instructions for filing these forms. The packet shall also contain [also contain] [Revenue Form 62A, Kentucky Intangible Property Tax Return, and a brochure entitled "Your Rights as a Kentucky Taxpayer".

(31) [477] Revenue Form 41A720-S4, "Instructions for Filing Corporation Estimated Income Tax Voucher", shall include [are included] 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) [48] 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 tax 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.

(33) [48] Revenue Form 41A720-S17, "Schedule KREDA-T, Tracking Schedule for A KREDA Project", shall be used by corpo-
rations 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) [969] 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.

(32) [98] 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.

(31) [98] Revenue Form 41A720-S22, "Schedule KIRA, Tax Credit Computation Schedule (For A KIRA Project of 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 141.400. Instructions shall be included on the back of the form.

(30) [98] Revenue Form 41A720-S23, "Schedule KIRA, Tax Credit Computation Schedule (For A KIRA Project of 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 141.400. Instructions shall be included on the back of the form.
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 the corporation tax return in accordance with KRS 141.040.

(56) Revenue Form 41A725CP, "Schedule CP, Form 725, Kentucky Single Member LLC Individually Owned Consolidated 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.

(57) Revenue Form 41A725KCR, "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.

(58) 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.

(59) Revenue Form 41A725S, "Instructions, fee 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.

(60) Revenue Form 41A725S, "2005 Kentucky Single Member LLC Individually Owned Corporation Income Tax Return Forms and Instructions", [Packet], [previews], 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.

(61) Revenue Form 41A726, "Form 765, Kentucky Partnership Income Tax Return (LLC, LLP, and LP Taxed as a Corporation)", shall be used by a partnership organized as a LLC, LLP, or LP to file corporation tax returns, if owned by a Kentucky Taxpayer.

(62) Revenue Form 41A726S, "Schedule K-1 (Form 765), 2005, [Kentucky Partner's Share of Income, Credit, Deductions, Etc.", shall be used by a partnership organized as a LLC, LLP, or LP to report to their partners the amount of income, credit, deduction, etc., that the partners shall (shall) report for Kentucky income tax purposes. Instructions shall be included on the back of the form to assist the partner in preparing their Kentucky individual income tax return.

(63) Revenue Form 41A725KCR-C, "Schedule KCR (Form 765), [Kentucky Nexus Consolidated Return Schedule]", shall be used by a partnership organized as a LLC, LLP, or LP filing a nexus consolidated return.

(64) Revenue Form 41A725S, "Schedule KCR-C (Form 765), [Kentucky Nexus Consolidated Return Schedule Continuation Sheet]", shall be used as needed by a partnership organized as a LLC, LLP, or LP to file a nexus consolidated return.

(65) Revenue Form 41A725S, "Schedule S (Form 725 or 765), [Net Operating Loss Schedule Pass-Through Entities]", shall be used by a LLC, LLP, or LP having a current year net operating loss or a carry forward of a net operating loss.

(66) Revenue Form 41A851-N, "Form 851-N, Kentucky Affiliation and Payment Schedule (Form 725 or 765)", shall be used by a LLC, LLP, or LP filing a nexus consolidated return to be attached to the tax return filed with the Department of Revenue.

(67) Revenue Form 41A7660, "Instructions, fee 2005 Kentucky Partnership Income Tax Return (LLC, LLP, and LP Taxed as a Corporation)", shall be used by partnership organized as a LLC, LLP, or LP to file the 2005 Kentucky corporation income tax return and related schedules.

(68) Revenue Form 41A766S, "2005 Kentucky Partnership (LLC, LLP, and LP) Corporation Income Tax Forms and Instructions", shall provide [Packet]--[previews] in a single packet Form 765, Kentucky Partnership (LLC, LLP, or LP) Corporation Income Tax Return, other forms commonly used by corporations in conjunction with Form 765, and instructions for filing these forms. The packet shall also contain [false contains] a brochure entitled "Your Rights as a Kentucky Taxpayer.

(69) Revenue Form 41A720X, "Form 720X, Amended Kentucky Corporation Income Tax and Corporation License Tax Return", shall be used by corporations to report changes to the Kentucky Corporation Income and License Tax Return, as previously filed.

(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) Revenue Form 41A7292, "Form 722, Election to File Consolidated Kentucky 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) Revenue Form 41A7250, "Business Development Corporation Tax Return", shall be used by corporations organized under the provisions of KRS Chapter 155 to determine the excise tax due in accordance with KRS 155.170.

(73) Revenue Form 41A851-K, "Form 851-K, Kentucky Affiliates 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) Revenue Form 41A7299, "Kentucky Information Return—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) Revenue Form 41A7299-S1, "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) Revenue Form 73A060L, "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 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, "2005 [2004] Application for Extension of Time to File Individual, General Partnership and Limited Liability Company Income Tax Returns for Kentucky" shall be submitted to the Department of Revenue by individuals, partnerships, and LLCs prior to the date prescribed by law for filing a return to request an extension (six) 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, partnership, LLC, or other entity to transfer the individual estimated tax to the 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...
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Kentucky income tax withheld on each nonresident individual member whose net distributive share income is at least $1,000. (6) [60] Revenue Form 42A201 (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) [61] Revenue Form 40A727, "Kentucky Income Tax Forms Requisition" shall be used to order income tax forms. (8) [79] 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) [80] 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 and credits on an individual income tax return which may result in an underpayment or overpayment.

(10) [89] 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) [140] Revenue Form 42A740, "2005 [2004] Kentucky Individual Income Tax Return Full-Year Residents Only" shall be completed by residents of Kentucky to report taxable income and income tax liability for taxable years beginning before December 31, 2004 [2003], and shall be filed within three and one-half (3 1/2) months after the close [closure] of the taxable year.

(12) [141] Revenue Form 42A740-EZ, "2005 [2004] Kentucky Individual Income Tax Return for Single Persons with No Dependents" shall be completed by single individuals to report taxable income and income tax liability for taxable years beginning after December 31, 2004 [2003], and shall be filed within three and one-half (3 1/2) months after the close [closure] of the taxable year.

(13) [142] Revenue Form 42A740-J (10-05-04), "Schedule J, Kentucky Farm Income Averaging [Schedul[es]]", 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) [143] Revenue Form 42A740-L, "2000 Kentucky Income Tax Postcard" shall be used to mail labels and information to resident individuals.


(16) [145] Revenue Form 42A740-NP [42A740-S], "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, 2004 [2003], and shall be filed within three and one-half (3 1/2) months after the close [closure] of the taxable year.


(20) [149] Revenue Form 42A740-S10, "Instructions for Form 2005 [2004] Kentucky Form 740-NP [Income Tax Return], Nonresident or Part-Year Resident Income Tax Return [forms and instructions]" shall be used by nonresident and part-year resident individuals for use in determining taxable income and income tax liability for 2005 [2004].


(22) [243] Revenue Form 42A740-ES, "2005 [2004] Individual Income Tax Kentucky Estimated Tax Voucher* shall be submitted to the Department of Revenue by individuals with payment of quarterly estimated tax.

(23) [253] Revenue Form 42A740-S1, "Form 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) [255] Revenue Form 42A740-S4, "2005 [2004] Instructions for Filing Estimated Tax Vouchers* shall be used to compute the amount of estimated tax owed for 2005 [2006].

(25) [261] Revenue Form 42A740-T, "2004 Kentucky Individual Income TeleFile Tax Record [and Instructions]" shall be completed by residents who choose to file their individual income tax return by telephone.


(28) [266] Revenue Form 42A740-A, "Kentucky Schedule A Form 740, Kentucky, 2005 [2004] Itemized Deductions" shall be completed by resident individuals and attached to Form 740 in support of itemized deductions claimed for 2005 [2004].

(29) [267] Revenue Form 42A740-F, "Schedule F, Form 740, 2005 [2004] Kentucky Pension Income Exclusion* shall be completed by individuals and attached to Form 740 to compute the amount of allowable pension exclusion for 2005 [2004].

(30) [268] Revenue Form 42A740-TC, "Schedule TC, Form 740, 2004 Tax Computation Schedule" shall be completed by individuals and attached to Form 740 to claim 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.

(31) [269] Revenue Form 42A740-UTC, "Schedule UTC, Form 740 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 claims for employment driven unemployment for prior year.


(33) Revenue Form 42A740-KNO, "Schedule KNO, 2005 Kentucky Net Operating Loss Schedule* shall be used by individuals to compute and carry forward a net operating loss to subsequent years.

(34) [341] Revenue Form 42A740-S20, "Form 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 deduction.

(35) [353] 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) [333] 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) [343] Revenue Form 42A740-S22, "8453-K, 2005 [2004] Kentucky Individually Income Tax Declaration for Electronic Filing" shall be completed, signed by each individual taxpayer (taxpayer(s)) and submitted to the Department of Revenue in support of an electronically filed return.

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(38) 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 42A740-524, "9883-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) 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.


(42) 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) Revenue Form 42A741t-K1, "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, and credits.

(44) 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) Revenue Form 42A765-GP1, "Instructions, Form 265-GP [265], 2005 [2004] Kentucky General Partnerships Income Return* shall be provided to assist the general partnership in completing a general partnership return.

(46) Revenue Form 765-GP [42A765-K4], "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, and credits.

(47) 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) 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) Revenue Form 42A800, "Withholding Kentucky Income Tax, 2006 [Instructions for Employers] and Withholding Tax Tables Computer Formula* shall be used by employers to determine the amount of Kentucky tax to withhold from wages.

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

(51) 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) 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) 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) 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) 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) Revenue Form 42A804, "Form K-4, Kentucky Department of Revenue [Garnet] Employee's Withholding Exemption Certificate* shall be used by employees to inform employers of the number of exemptions used to determine the amount of Kentucky tax to withhold from wages.

(58) Revenue Form 42A804-A, "Form K-4A, Kentucky Cabinet Withholding Exemptions for Excess Itemized Deductions* shall be used by employees to determine additional withholding exemptions.

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

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

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

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

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

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

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

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

(70) 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 the correct mailing address for withholding returns.

(72) Revenue Form 42D003, "2005 Kentucky Wage and Tax Statements (W-2(K)-2 Order Form - Kentucky Order Form for W-2(K)-2* shall be used by employers to order wage and tax statements.

(73) Revenue Form 42D006, "Tax Rate Reduction and Family Size [Tax Credit]* shall show [show] 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 92A120, "Instructions 92A120 Packet", shall include [6] excise tax certificate booklets 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 and [6] Estate Tax Return", shall be sent by the inheritance and estate tax section to the personal representative or beneficiary of an estate to certify all death duties 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 Form [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 Deferred 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 92A929, "Notice of Agricultural and Horticultural Inheritance Tax Lien", shall be used to request the county clerk to 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 Release of Agricultural and Horticultural Inheritance Tax Lien", shall be used by the beneficiaries or estate tax section to request the county clerk to release the five (5) year lien that guaranteed collection of tax if the terms of the agreement are 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 to do a partial release of the five (5) year lien that guaranteed collection of tax if the terms of the agreement are not met.

(19) Revenue Form 92A932, "Receipt of Inheritance and Estate Taxes", shall include in it 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 office 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 Premiums 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 reinsurers.

(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.

Section 10. Legal Process - Required Forms. Revenue Form 73A200, "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 Stamps", 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 138.670 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 refund 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 a 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 KRS 136.344 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 Department of Revenue [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 fuel.
(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 not entitled.
(10) Revenue Form 72A066, "Application for Refund of Kentucky Tax Paid on Gasoline Used in Operation of Aircraft", shall be used by an 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) 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) 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) 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) 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 if [where] the Kentucky tax was paid to the supplier, on the gasoline dealer's monthly report.
(21) Revenue Form 72A081-S, "Supplier's Report Gasoline Imported into Kentucky - Kentucky Tax Paid by Supplier", shall be used by any licensed gasoline dealers to report gasoline imported into Kentucky if [where] the Kentucky tax was paid by the supplier, on the gasoline dealer's monthly report.
(22) 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) 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) 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) 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) 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) 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) 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.
(30) Revenue Form 72A090, "Gasoline Dealers Monthly Terminals Storage Report", shall be used by licensed gasoline dealers to report monthly terminal storage activity, on the gasoline dealer's monthly report.
(31) 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) Revenue Form 72A092, "Transporter's Report of Motor Fuel Delivered", shall be used by licensed transporters to report monthly motor fuel deliveries.
(33) 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.
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) [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) [663] Revenue Form 72A221, "Report of Dyed Diesel Import", 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) [664] 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) [672] 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) [668] 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) [669] 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) [76] 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) [741] 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) [529] 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) [739] 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) [743] Revenue Form 72A234, "Licensed Special Fue... 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) [761] Revenue Form 72A235, "Special Fue... 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) [766] 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) [772] 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 insure payment of taxes, penalties, and interest for which a dealer or transporter may become liable.

(79) [765] 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's or motor fuel transporter's license.

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 Multiple-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 Certificate" 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 - Intern 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 insisting that a motor vehicle will not be operated upon Kentucky's public highways.

(10) Revenue Form 73A064, "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) [439] Revenue Form 73A065, "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.

(12) [441] 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-Saves-Company Property Tax Forms [Return] and Instructions for Public Service Companies 2006", shall be filed by public service companies with the Department of Revenue in a timely manner, location and other pertinent filing information.

(2) Revenue Form 61A200A, "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 depreciable cost for all operating and non-operating property types as of the end of the taxable year.

(3) Revenue Form 61A200B, "Report of Kentucky Vehicles, Car Lines and Watercraft", shall be filed by public service compa-
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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.

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

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

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

[21] (40) Revenue Form 61A200(V), "Wireless Telephone Property Report* shall be filed by wireless telephone providers operating in Kentucky to report spectrum data for those companies operating totally or partially in Kentucky.

[20] 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.


[23] (49) Revenue Form 61A207, 2006 [2006] Nonresident Watercraft Property Tax Return*, shall be filed by nonresident watercraft owners who 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.

[24] (49) Revenue Form 61A207, "Instructions for Filing Nonresident Watercraft Property Tax Return* 61A207*, shall be available to assist taxpayers who are required to file revenue form 61A207.

[24] Revenue Form 61A208, 2006 Public Service Company Property Tax Return-Coin Operated Telephones*, shall be filed by owners of co-operated telephones with the Department of Revenue, reporting an activity summary and copies of the annual report to stockholder and Kentucky financial statements.

[25] Revenue Form 61A209, "Public Service Company Sales*, shall be filed by public service companies with the Department of Revenue, reporting any bulk or parcel 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.

[26] Revenue Form 61A240, "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.

[27] (47) Revenue Form 61A211, "Public Service Company Schedule of Owned and/or Leased 2004 Motor Vehicles with Kentucky Situs as of January 1, 2005, assessment date* shall be filed by public service companies with the Department of Revenue, reporting all motor vehicles owned or leased within Kentucky [to assess property credit for previously assessed motor vehicles.

[28] (48) Revenue Form 61A211, "Instructions for Enclosed 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*.

[29] (48) 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] (49) 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 shall Inform [else-informs] the taxpayer of the protest period.

(30) [(34)] 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) [(49)] Revenue Form 61A255, “Notice of Assessment for 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 Form (Return) and Instructions for Communications (Communication) Service Providers and Multi-channel Video Programming (Premium) Service Providers", shall be filed by telecommunication, satellite, and cable television companies with the Department of Revenue, reporting any tangible personal property.

(33) Revenue Form 61A500(h), “Report of Total Tangible Personal 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 at each class of tangible personal property.

(34) Revenue Form 61A500(h), “Summary of Gross Tangible Personal Property Taxing 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 61A550, “Summary of Depreciated Tangible Personal Property Taxing 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) [(c3)] 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 (cruises, boats, and special watercraft to be billed as personal property).

(37) [(d3)] Revenue Form 61A508, “Annual Report of Distilled Spirits in Bonded Warehouse", shall be filed by distillers with the Department of Revenue to report inventory as of January 1.

(38) [(e6)] Revenue Form 61A508-S1, “Schedule 1 Department of Property Valuation Cost of Production Schedule", shall be filed by distillers with the Department of Revenue, reporting the average cost per gallon of production.

(39) [(e6)] Revenue Form 61A508-S2, “Schedule 2 Department of Property Valuation Storage of Cost Schedule", shall be filed by distillers with the Department of Revenue, reporting average per barrel storage cost.

(40) [(f7)] Revenue Form 61A509, “Schedule 3 Schedule of Consignment Sales", shall be filed by distillers with the Department of Revenue, reporting the date of the sale or purchase, the number of barrels, age and price.

(41) [(g8)] Revenue Form 61A508-S4, “Schedule 4", shall be filed by distillers 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 Telconm Property Tax Statement", shall be used by county clerks, local tax jurisdictions and bill assessments of distilled spirits and telecommunications personal property.

(43) [(h9)] 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) [(i4)] 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.

(45) [(i4)] Revenue Form 62A075, “[Repayment] 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) [(i4)] Revenue Form 62A006, “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) [(i4)] 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) [(i4)] 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) [(i4)] 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 jurisdiction, certifying the tax rates established by the taxing jurisdiction for motor vehicles and watercraft.

(50) [(i4)] Revenue Form 62A016, “Quietus" shall be issued by the Department of Revenue to certify that a county clerk is in good standing with regard to the conduct of ad valorem property tax collection duties.

(51) [(i4)] 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.

(52) [(i4)] 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) [(i4)] 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's ad valorem property tax distributions to the various county fiscal courts.

(54) [(i6)] Revenue Form 62A020, “Intercounty Property Tax Collections", shall be completed by the Department of Revenue to list the ad valorem property tax made to individual taxing jurisdictions.

(55) [(i6)] 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) [(i6)] 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.

(57) [(i6)] 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 lessee information for leased property.

(58) [(i6)] 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) [(i6)] 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) [(i6)] 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) [(i6)] 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 information system. The PVA shall [will] present the form to the county clerk when a tax refund is authorized.

(62) [(i6)] Revenue Form 62A050, “Application for Property Tax Refund", shall be filed by taxpayers seeking a refund of taxes.

(63) [(i6)] Revenue Form 62A200, "[2006] [9006] Unmind"
Coal Property Tax Information Return", shall be filed by owners or lessees of unmined minerals with the Department of Revenue, reporting the value of the minerals.

(23) [661] Revenue Form 62A300A, "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.

(25) [644] 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.

(26) [663] Revenue Form 62A200C, "Schedule C Leased Property", shall be filed by all lessors and sublessees with the Department of Revenue, reporting a property schedule for each parcel leased from another party and outlined on the lessee map.

(27) [665] 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.

(28) [664] Revenue Form 62A200E, "Schedule E Lease Terminations, Transfers or [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.

(29) [666] Revenue Form 62A200F, "Schedule F Farm Exception to Unmined Minerals [Minerals NonExcepted]", 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.

(30) [667] 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.

(31) [668] 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.

(32) [669] Revenue Form 62A303, "Property Valuation Administrator’s Recapturement of Real Property Tax Roll" shall be filed by the property valuation administrator by the first Monday in April, showing a recapturement of property assessments by type of property and by taxing district. This form shall also be [a] [as] known as "first recapit".

(33) [670] Revenue Form 62A304, "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. This form shall also be [a] [as] known as "final recapit" or "second recapit".

(34) [740] 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.

(35) [744] Revenue Form 62A310, "Summary of Bonds Held by Kentucky Residents" [Corporation Report of Securities Held by Kentucky Residents - Cover Letter], shall be filed with [the] the Kentucky corporations with the Department of Revenue, reporting their taxable securities held by Kentucky residents.

(36) [755] Revenue Form 62A310-S, "Corporation Report of Bonds [Securities] Held by Kentucky Residents (Residents)", shall be filed by Kentucky corporations with the Department of Revenue, reporting their taxable securities held by Kentucky residents.

(37) [755] 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.

(38) [744] Revenue Form 62A311-S1, "Life Insurance Proceeds Summary Report (Kentucky - Property Tax)", shall be filed by life insurance companies doing business in Kentucky, with the Department of Revenue, reporting the value of the proceeds of life insurance policies left on deposit with the insurance company and subject to withdrawal as of January 1.
property tax collections for the 1997 tax year only.

Revenue Form 62A398, "Property Valuation Administrator's Bond" shall be completed by Property Valuation Administrators evidencing surety with the Commonwealth and a local school board(s) and affirming a commitment to fulfill the duties of the office.

Revenue Form 62A399, "Notice To Appear in Circuit Court", shall be served to a person who is indicted to another person who has a delinquent tax liability.

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.

Revenue Form 62A401, "Final Notice Before Distraint", shall be sent by the sheriff to the owner of real and personal property notified in a tax roll.

Revenue Form 62A405, "Notice of Sale of Tax Bill", shall be sent by the county attorney to the owner of real property to notify that a certificate of delinquency has been issued against the property.

Revenue Form 62A500, "2006 Tangible Personal Property Tax Return", shall be filled 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 the federal registration number, make and model, and taxpayer's value for each aircraft.

Revenue Form 62A500-C, "Consignee Tangible Personal Property Tax Return", shall be filled by persons in possession of consigned inventory, that has not been reported on Revenue Form 62A500, either the property valuation administrator of the county of taxable situs or the Department of Revenue, reporting consignor information and consigned inventory information.

Revenue Form 62A500-L, "Lessee Tangible Personal Property Tax Return" shall be filled 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 lessee information and equipment information.

Revenue Form 62A500-S1, "Dealer's Inventory Listing for Line 34 Tangible Personal Property Tax Return" shall be filled by automobile dealers, dealers with new boats and marine equipment held under a floor plan or dealers with land 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.

Revenue Form 62A600, "Domestic Savings and Loan Tax Return", shall be filled with the Department of Revenue by savings and loans operating solely in Kentucky, reporting the balances in their capital accounts.

Revenue Form 62A601, "Foreign Savings and Loan Tax Return", shall be filled with the Department of Revenue by foreign savings and loans authorized to do business in this state, reporting the balances in their capital accounts.

Revenue Form 62A601-S1, "Schedule A Apportionment Factor", shall be filled with the Department of Revenue, by taxpayers filing Revenue Form 62A601, reporting the amount of Kentucky receipts, loans, and payrolls.

Revenue Form 62A601-S2, "Schedule B, Computation of Exempt Securities" shall be filled with the Department of Revenue, by taxpayers filing Revenue Form 62A601, reporting the market value of U.S. government securities.

Revenue Form 62A650, "Bank Deposits Tax Return" shall be filled with the Department of Revenue by financial institutions, reporting the amount of its deposits as of the preceding January 1.
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Deposits shall be filed with the Department of Revenue, by taxpayers filing Revenue Form 62A600 or 62A601, listing deposits located in each county and city.

(126) [4479] Revenue Form 62A562, "Certification of Tax Rate [Rates] for Bank Deposits Franchise Tax", shall be filed by the local taxing authority for the revenue property in the

(129) [4429] Revenue Form 62A663, "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.

(132) [4423] Revenue Form 62A663-A, "Schedule A, Summary of Deposits", shall be filed with the Department of Revenue, by financial institutions filing Revenue Form 62A663, to summarize deposits.

(131) [4424] 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) [436] Revenue Form 62A865, "Kentucky Intangible Property Tax - [1968] Margin Accounts" shall be sent by the department to the brokers maintaining an office in Kentucky notifying them of their intangible assessment.

(133) [4426] 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 assessment value of the intangible property to be paid to the Department of Revenue in order to determine if the property has a Kentucky business situs.

(134) [4427] 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 has a Kentucky taxable business situs.

(135) [4428] 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.

(159) [4429] 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.

(151) [4360] 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.

(137) [4431] 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.

(138) [4432] 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.

(139) [4433] 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.

(140) [4434] 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.

(140) [4430] 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.

(141) [4435] 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.

(142) [4436] 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.

(143) [4437] 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.

(145) [4389] 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.

(146) [4409] Revenue Form 62B016, "[Reposure] Personal 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) [444] Revenue Form 62B808, "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 property tax rolls.

(149) [4449] 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.

(150) [4453] 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.

(151) [4444] 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) [445] 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 preparign a deed in a county.

(153) [4456] Revenue Form 62F031, "Appeal to Local Board of Assessment Appeals", shall be filed with the county clerk by any taxpayer who wishes to appeal his assessment on real property.

(154) [4471] 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 for a particular reporting period.

(5) Revenue Form 51A103E, "Kentucky Accelerated 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.

(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 and Use Tax and Utility Gross Receipts License Tax", 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 production processor to claim exemption from sales and use tax.

(11) Revenue Form 51A112, "Application for Direct Pay Authorization", shall be submitted by a law firm 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 (Negotiable-Filed)" 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 [each] 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 governments to apply for a sales and use tax exemption on purchases of tangible personal property and certain services to be used 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 the [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 material.

(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 Tax Credit Schedule of Qualified Certified Aircraft", shall be completed by a qualified certified aircraft carrier on a monthly basis to claim an aviation fuel tax credit against the company's sales and use tax liability for the month.

(21) Revenue Form 51A131, "Kentucky Sales and Use Tax Monthly Aviation Fuel Dealer Supplementary Schedule", shall 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 Supplementary Schedule", shall be completed by an equine breeder to report taxable receipts from equine breeding fees.

(23) 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.

(24) 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) Revenue Form 51A150, "Airport 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.

(26) 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) 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) Revenue Form 51A153, "Certificate of Exemption for On-Farm Chicken or Livestock Raising Facilities", shall be presented to a retailer by a person raising chickens or livestock 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) Revenue Form 51A154, "Certificate of Exemption for 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) Revenue Form 51A155, "Certificate of Exemption for Rattle Eird 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 agricultural pursuit.

(31) Revenue Form 51A156, "Certificate of Exemption for On-Farm Lime/Algae Production", shall be presented to a retailer by a person regularly engaged in raising algae as a business to claim exemption for the purchase of water used to raise algae.

(32) 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.
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(33) 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, ruminants, buffalo or aquatic organisms to claim exemption from sales and use tax on the purchase of certain tangible personal property.

(34) 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) 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 not been issued.

(36) 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 and obtain receipt of sales and use tax.

(37) 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 vehicles 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(22)(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.

(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) 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) Revenue Form 51A209, "Kentucky 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) Revenue Form 51A216, "Application for 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) 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) 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) 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) 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 if 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) 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) 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.

(49) 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) 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 filming and producing motion pictures in Kentucky.

(51) 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 an 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) Revenue Form 51B105A, "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) 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 in which a claim for exemption has been filed. This claim should be 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.

(54) 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 and additional information concerning the exemption from sales and use tax.

(55) Revenue Form 51F010, "Energy Direct Pay Authorization: Notification", shall be issued by the Department of Revenue to advise 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 Severs and/or Processors" shall be used by the Department of Revenue to register coal severance and/or processors.

(2) Revenue Form 55A002, "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 dis
Form*, November, 2005 [June, 2004];
5. Revenue Form 73A409, "Cigarette Evidence/Property Receipt", November, 2003;
8. Revenue Form 73A421, "Cigarette Inventory Floor Tax", May, 2005;
9. Revenue Form 73A422, "Monthly Report of Other Tobacco Products and Snuff", July, 2005; and
10. Revenue Form 73A401, "Cigarette Tax Credit Claim Wholesaler's Affidavit", June, 2005;
(e) Corporation income and license taxes - referenced material:
3. Revenue Form 41A720CC, "Schedule CC, Coal Conversion Tax Credit", October, 2004;
4. Revenue Form 41A720-Cl, "Schedule Cl, Application for Coal Incentive Tax Credit", December, 2001;
11. Revenue Form 41A720BIO (K-1), "Schedule BIO (K-1), Distributive Share of Approved Biodiesel and/or Blended Biodiesel Tax Credit", October, 2005;
12. Revenue Form 41A720KCR, "Schedule KCR, Kentucky Consolidated Return Schedule", October, 2005;
15. Revenue Form 41A720VERB, "Schedule VERB, Voluntary Environmental Remediation Tax Credit (Brownfields)", October, 2005;
16. Revenue Form 41A720VERB-K-1, "Schedule VERB (K-1), Distributive Share of Approved Voluntary Environmental Remediation Tax Credit (For Use By General Partnership)", October, 2005;
20. [10] Revenue Form 41A720QR (K-1), "Schedule QR (K-1), Pro Rata/Distributive Share of Approved Qualified Research Facility Tax Credit", December, 2004;
23. Revenue Form 41A720RC (O), "Instructions For Schedule RC (Application for Income Tax Credit for Recycling and/or Composting Equipment or Major Recycling Project)", October, 2005;
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", October, 2005;
29. [16] Revenue Form 41A720S-18, "Schedule KRESA SP, Tax Credit Computation Schedule for a KRESA Project of a General Partnership (S-Corporations or Partnerships)", October, 2005 [December, 2004];
32. [19] Revenue Form 41A720S-1, "Schedule KIDA SP, Tax Credit Computation Schedule for a KIDA Project of General Partnership (S-Corporations or Partnerships)", October, 2005 [December, 2004];
35. [22] Revenue Form 41A720S-26, "Schedule KIRA SP, Tax Credit Computation Schedule for a KIRA Project of General Partnership (S-Corporations or Partnerships)", October, 2005 [December, 2004];
38. [25] Revenue Form 41A720S-29, "Schedule KJDA SP, Tax Credit Computation Schedule for a KJDA Project of General Partnership (S-Corporations or Partnerships)", October, 2005 [December, 2004];
41. [28] Revenue Form 41A720S-32, "Schedule KIRA, Tax Credit Computation Schedule for a KIRA Project of General Partnership (S-Corporations or Partnerships)", October, 2005 [December, 2004];
42. [29] Revenue Form 41A720S-33, "Schedule KIDA, Tax Credit Computation Schedule for a KIDA Project of General Partnership (S-Corporations or Partnerships)", October, 2005 [December, 2004];
43. [30] Revenue Form 41A720S-35, "Schedule KJDA, Tax Credit Computation Schedule for a KJDA Project of General Partnership (S-Corporations or Partnerships)", October, 2005 [December, 2004];
45. [32] Revenue Form 41A720S-37, "Schedule KIRA, Tax Credit Computation Schedule for a KIRA Project of General Partnership (S-Corporations or Partnerships)", October, 2005 [December, 2004];
46. [33] Revenue Form 41A720S-38, "Schedule KJDA, Tax Credit Computation Schedule for a KJDA Project of General Partnership (S-Corporations or Partnerships)", October, 2005 [December, 2004];
47. [34] Revenue Form 41A720S-39, "Schedule TCS, Tax Credit Computation Summary Schedule for G Corporations with More Than One (1) Economic Development Project", October, 2005 [December, 2004];
48. [35] Revenue Form 41A720S-40, "Schedule KIRA, Tax Credit Computation Schedule for a KIRA Project of General Partnership (S-Corporations or Partnerships)", October, 2005 [December, 2004];
11. Revenue Form 92A204, "Real Estate Valuation Information Form [Sheet]", July, 2003;
12. Revenue Form 92A205, "Kentucky Inheritance Tax Return (Simplified Format)", July, 2003;
13. Revenue Form 92A500, "Notice of Insurance Payment", June, 1984;
15. Revenue Form 92A928, "Election to Defeer the Payment of Inheritance Tax Through Installments", July, 2003;
19. Revenue Form 92A932, "Receipt of Inheritance and Estate Taxes", December, 1984;
20. Revenue Form 92A936, "Election to Qualify Terminable Interest Property and/or Power of Appointment Property", May, 1986;
23. Insurance tax - referenced material:
   1. Revenue Form 74A100, "Insurance Premiums Tax Return", November, 2000;
29. Revenue Form 74A117, "Monthly Insurance Surcharge Report - Domestic Mutual, Cooperative and Assessment Fire Insurance", July, 2000; and
32. Marijuana and controlled substance - referenced material:
   1. Revenue Form 73A701, "Instructions for Attaching 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; and
   3. Revenue Form 73A703, "Marijuana or Controlled Substance Stamps Order Form", October, 2002;
33. Motor fuels - referenced material:
   2. Revenue Form 72A005, "Application for Approval to Sell Watercraft Refund Motor Fuels - Public Boat Dock", February, 2003;
   6. Revenue Form 72A052, "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 Taxcabs)", 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, 1984];
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", June, 1999;
15. Revenue Form 72A075, "Receipts of Unsolicited Alcohol or Other Alcohol", August, 2002.
18. [17.] Revenue Form 72A080, "Report of Gasoline Received From Licensed Kentucky Dealers", February, 2002;
23. [23.] Revenue Form 72A083, "Report of Gasoline Received from Terminal or Refinery", June, 1998;
28. [28.] Revenue Form 72A088, "Report of Gasoline Withdrawals Exported or Sold by a Dependent of the Owner", June, 1988;
31. [31.] Revenue Form 72A091, "Gasoline Schedule of Sales Qualifying for Agricultural Tax Credit", June, 2002;
33. [33.] Revenue Form 72A103, "Licensed Gasoline Dealer's Estimated Tax Payment", January, 2003;
35. [35.] Revenue Form 72A110, "Certification of Motor Special Fuels Nonhighway Use", December, 2005 [September, 2002];
36. [36.] Revenue Form 72A124, "Report of Kerosene Received and Blended", June, 2002;
37. [37.] Revenue Form 72A127, "Special Fuels Dealers Schedule of Sales Qualifying for State or Local Government Agency Credit", June, 2002;
38. [38.] Revenue Form 72A128, "Special Fuels Dealer's Schedule of Sales Qualifying for Nonprofit Religious, Charitable or Educational Organization Credit", June, 2002;
39. [39.] Revenue Form 72A129, "Special Fuels Schedule of Sales Qualifying for Commercial Off-Road Use Tax Credit (Undyed Diesel)", June, 2002;
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24. [23] [23] Revenue Form 61A207I, "Instructions for Filing Nonresident Watercraft Property Tax Return" [61A207], November, 2004;


29. [25] [26] Revenue Form 61A210, "Cable Television Company Sales", November, 2004;


30. [25] Revenue Form 61A211(I), "Instructions for Enclosed [Revenue Form 61A211", November, 2005 [2004];


35. [40] Revenue Form 61A500(U), "Summary of Reported Personal Tangible Property Listing by Taxing District", November, 2005;

35. [41] [33] Revenue Form 61A507, "Distilled-Spirits or Nonresident Watercraft Property Tax Statement", January, 2006 [December, 2003];


39. [43] [36] Revenue Form 61A508-S1, "Schedule 1 Department of Property Valuation Cost of Production Schedule", November, 2005 [2004];


40. [45] [37] Revenue Form 61A508-S3, "Schedule 3 Schedule of Bulk Sales", November, 2005 [2004];


42. [47] Revenue Form 61A509, "Distilled Spirits or Telcma Property Tax Statement", January, 2005;

43. [48] [39] Revenue Form 61A506, "Motor Boat Tax and/or Registration Renewal Notice", November, 2005;

44. [49] [49] Revenue Form 61A507, "Motor Vehicle Tax and/or Registration Renewal Notice", November, 2005;


47. [52] [42] Revenue Form 62A010, "Notice for Boat Transfer", November, 2005;


49. [54] [46] Revenue Form 62A015, "1999 Motor Vehicle and Watercraft Property Tax Rate Certification", November, 2005;

50. [55] [46] Revenue Form 62A016, "Quitsuit", November, 2005;

51. [56] [47] Revenue Form 62A017, "County Clerk's Claim for Calculation of Motor Vehicle and Boat Bills", November, 2005;

52. [57] [48] Revenue Form 62A018, "School Taxing Jurisdiction - Motor Vehicle and Watercraft Property Tax Rate", November, 2005;

53. [58] [49] Revenue Form 62A019, "Distributions of Ad Valorem Tax to the Fiscal Courts", November, 2005;

54. [59] [59] Revenue Form 62A020, "Intercounty Property Tax Collections", November, 2005;

55. [59] [60] Revenue Form 62A023, "Application for Exemption from Property Taxation", September, 2005 [December, 1999];

56. [59] [60] Revenue Form 62A023-I, "Application for Exemption from Property Taxation for Religious Organizations", September, 2005 [December, 1999];

57. [61] [61] Revenue Form 62A024, "Undeveloped Oil and Gas Property Tax Return", January, 1998;


59. [63] [66] Revenue Form 62A037, "Mail Back Card Department of Property Valuation", April, 1996;

60. [65] [66] Revenue Form 62A039, "Mail Back Card Department of Property Valuation for Mobile Manufactured Home", February, 2000;


62. [67] [66] Revenue Form 62A050, "Application for Property Tax Refund", September, 2005 [October, 2002];


64. [69] [69] Revenue Form 62A200A, "Schedule A Fee Property Ownership", December, 2005 [2004];

65. [70] [64] Revenue Form 62A200B, "Schedule B Mineral Property Ownership (Coal Only)", December, 2005 [2004];

66. [71] [63] Revenue Form 62A200C, "Schedule C Leased Property", December, 2005 [2004];

67. [72] [63] Revenue Form 62A200D, "Schedule D Property or Stock Transfers", December, 2005 [2004];

68. [73] [64] Revenue Form 62A200E, "Schedule E Lease Terminations, Transfers of [and Assignments]", December, 2005 [2004];

69. [74] [65] Revenue Form 62A200F, "Schedule F Farm Exception (Exclusions) to Unmined Minerals [Mineral] Tax", December, 2004;

70. [75] [66] Revenue Form 62A200G, "Schedule G Geologic Information by County", December, 2005 [2004];

71. [76] [67] Revenue Form 62A302, "Request for Information
137. [428] [430] Revenue Form 62A880, "[Omitted] Personal Property Assessment", February, 2004;
138. [428] [430] Revenue Form 62B001, "Unmined Coal Tax Notice (Sublessee)", March, 2002;
139. [428] [430] Revenue Form 62B002, "Unmined Coal Tax Notice (Lessee)", March, 2002;
140. [428] [430] Revenue Form 62B003, "Unmined Coal Tax Notice (Owner)", March, 2002;
141. [428] [430] Revenue Form 62B010, "Omitted Notice of Assessment on Unmined Coal", March, 2002;
142. [428] [430] Revenue Form 62B011, "Limestone, Sand, or Gravel Tax Notice", March, 2002;
143. [428] [430] Revenue Form 62B012, "Oil Assessment Notice", March, 2002;
144. [428] [430] Revenue Form 62B013, "Clay Property Assessment Notice", March, 2002;
145. [428] [430] Revenue Form 62B014, "Undeveloped Oil and Gas Assessment Notice", March, 2002;
146. [428] [430] Revenue Form 62B015, "Gas Assessment Notice", March, 2002;
147. [428] [430] Revenue Form 62B016, "Fluorescent Property Assessment Notice", March, 2002;
149. [428] [430] Revenue Form 62F002, "Appeals Process for Personal Property Assessments", January, 1999;
151. [428] [430] Revenue Form 62F015, "PVA Open Records Commercial Fee Guidelines", May, 2002;
152. [428] [430] Revenue Form 62F020, "Deeds/Transfers and Property Taxes", January, 1999;
153. [428] [430] Revenue Form 62F031, "Appeal to Local Board of Assessors Appeals", January, 2000;
(o) Racing taxes - referenced material: Revenue Form 73A100, "Race Track Par-Mutuel and Admissions Report", June, 2003;
(p) Sales and use tax - referenced material:
1. Revenue Form 51A101, "Sales and Use Tax Permit", September, 2004;
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;
15. Revenue Form 51A125, "Application for Purchase Exemption Sales and Use Tax", February, 1993;
22. Revenue Form 51A132, "Kentucky Sales and Use Tax Equine Breeders Supplementary [Supplemental] Schedule", June, 2005;
29. [62] Revenue Form 51A154, "Certificate of Exemption Out-of-State Delivery for Aircraft, All Terrain Vehicle (ATV), Mobile/Manufactured Homes, Campers, Boats, Motors or Trailers", January, 2005;
31. Revenue Form 51A156, "Certificate of Exemption for On-Farm Uplands/Apaca Production", September, 2005;
40. [62] Revenue Form 51A205, "Kentucky Sales and Use Tax Instructions", July [January], 2005;
42. [62] Revenue Form 51A216, "Application for Pollution Control Tax Exemption Certificate", March, 2005;
46. [62] Revenue Form 51A227, "Certificate of Resale (Schools)", August, 1984;
48. [62] Revenue Form 51A229, "Fluidized Bed Combustion
Technology Tax Exemption Certificate*, January, 1987;
49. [45] Revenue Form 51A241, "Registration for the Kentucky Sales and Use Tax Refund for Motion Picture and Television Production Companies", February, 1987;
50. [46] Revenue Form 51A242, "Application for Sales and Use Tax Refund for Motion Picture Production Company", January, 1992;
53. [49] Revenue Form 51F008, "Federal Government Exemption From Kentucky Sales and Use Tax Notification", December, 1998;
54. [50] Revenue Form 51F009, "Purchase Exemption Notification", December, 1998; and
(c) Severance taxes - referenced material:
1. Revenue Form 55A001, "Application for Certificate of Registration for Coal Severes and/or Processors", December, 2003;
2. Revenue Form 55A003, "Certificate of Registration - Severance Taxes", August, 1996;
4. Revenue Form 55A100, "Coal Tax Return", January, 2001;
5. Revenue Form 55A100, "Part IV - Schedule of Coal Sales (Construction)", August, 2005 [July, 2009];
6. Revenue Form 55A100D, "Coal Tax Return - Keep This Copy", August, 1988;
7. Revenue Form 55A100D, "Part IV - Schedule of Coal Sales (Keep this Copy (continuation))", August, 1988;
8. Revenue Form 55A101, "Coal Tax Return Instructions, August, 2005 [February, 2004];
9. Revenue Form 55A131, "Credit Memorandum", May, 1997;
10. Revenue Form 55A209, "Severance Tax Refund Application", May, 1997;
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 55A113, "Minerals Tax Credit for Limestone Sold in Interstate Commerce", November, 1997; and
21. Revenue Form 55A114, "Crude Petroleum Transporter's Application for Registration", February, 2001; and
(c) Telecommunications provider tax - referenced material:
1. Revenue Form 75A001, "Telecommunications Tax Receipts Certification Form", December, 2005;
2. Revenue Form 75A002, "Telecommunications Provider Tax Return", December, 2005; and
3. Revenue Form 75A000, "Telecommunications Tax Application", December, 2005;
(c) Transient room tax - referenced material, Revenue Form 72A950, "Transient Room Tax Monthly Return", April, 2005; and
(f) Utility gross receipts license tax - referenced material:
2. Revenue Form 73A901, "Utility Gross Receipts License Tax Return", August, 2005;
3. Revenue Form 73A901(m), "Instructions for Utility Gross Receipts License Tax Return", January, 2005;
5. Revenue Form 73A902-V, "Kentucky Utility Gross Receipts License Tax Payment Voucher", August, 2005; and
6. Revenue Form 73F010, "Utility Gross Receipts License Tax", March, 2005; and
(b) 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, 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 PERSOSN: Edward A. Mattingly, Legislative Services, Finance and Administration Cabinet, Room 156A, Capitol Annex, Frankfort, Kentucky 40601, phone (502) 564-4240, fax (502) 564-3894, email eddie.mattingly@ky.gov

FINANCE AND ADMINISTRATION CABINET
Department of Revenue
Office of Income Taxation
(As Amended at ARRS, June 13, 2006)
103 KAR 15:100. Nonrefundable and refundable corporation income tax credits.

RELATES TO: KRS 141.010, 141.020, 141.0205, 141.040, 141.0420
STATUTORY AUTHORITY: KRS 141.130(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) "Lower-tier PTE corporation" means a member of a PTE corporation that is itself a PTE corporation.
(2) "PTE corporation" means any corporation identified in KRS 141.010(24)(b) to (h).
(3) [35] "Nonrefundable credit" means the corporation income tax credit permitted by KRS 141.420(3)(a).
(4) [36] "Refundable credit" means the corporation income tax credit permitted by KRS 141.420(3)(c).
(5) [37] "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.

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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 taxable 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) of this section, 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.

(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(1);

(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(1);

(c) Subtract the tax computed in paragraph (b) of this subsection from tax computed in paragraph (a) of this subsection. This shall be 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; and

(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 LRC: February 10, 2006 at 10 a.m.
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) 564-9565.

FINANCE AND ADMINISTRATION CABINET
Department of Revenue
Office of Income Taxation
(As Amended at ARRS, June 13, 2006)

103 KAR 16:020. Qualified exempt organization under KRS 141.040(8)(b)(i). RELATES TO: KRS 141.040
STATUTORY AUTHORITY: KRS 131.130, 141.018, 141.040 NECESSITY, FUNCTION AND CONFORMITY: KRS 141.040(8)(b) 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. KRS 141.040(8)(d) authorizes the department to promulgate an administrative regulation to further define "qualified exempt organization" to include entities created primarily for tax avoidance purposes with no legitimate business purposes. 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 not 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
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FINANCE AND ADMINISTRATION CABINET
Department of Revenue
Division of Income Taxation
(As Amended at ARRS, June 13, 2006)

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

RELATES TO: KRS 141.010(3), 141.120
STATUTORY AUTHORITY: KRS 131.130(1) [Chapter 13A] NECESSITY, FUNCTION, AND CONFORMITY: KRS 131.130(1) authorizes the department to promulgate administrative regulations necessary to administer and enforce Kentucky's tax laws. 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.
expenses for nonbusiness income, and clarifies that Kentucky follows both the transactional and functional tests.

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(8).

(4) "Business income" is defined in KRS 141.120(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 141.120(1)(a). 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 141.120. In the first step is to determine which portion of the entity's gross income is business income. The various items of nonbusiness income are then directly allocated to each state pursuant to the provisions of KRS 141.120. Business income is divided among the states where the business is conducted based on the property, payroll, and sales apportionment factors in KRS 141.120. The sum of:

(a) Nonbusiness income allocated to Kentucky;
(b) 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 as established in Sections 3 and 4 of this administrative regulation.

Section 3. Transactional Test. Under the transactional test, income shall be considered business income if the income arises (business-income-enstein) from transactions and activities in the regular course of the taxpayer's trade or business in accordance with this section.

(1) If the transaction or activity shall be (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 shall not be required to (need not) be one that frequently occurs in the trade or business.

(a) Most frequently-occurring transactions or activities shall (will) be in the regular course of that trade or business and shall (will), therefore, satisfy the transactional test.

(b) It shall be (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:

1. Customary in the kind of trade or business being conducted or

2. [are] within the scope of what that kind of trade or business does.

(c) 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, those (such) activities shall (do) not satisfy the transactional test.

(d) The transactional test shall include:

1. [Includes] (a) Income from sales of inventory, property held for sale to customers, and services which are commonly sold by the trade or business; and

2. (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.

(3) 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 shall include [also include] 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 the functional test, business income shall not be required to (need not) be derived from transactions or activities that are in the regular course of the taxpayer's own particular trade or business.

(a) [Except as provided in paragraph (b) of this subsection, it shall be] [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 affairs, or had been materially contributed to the production of business income of the trade or business, part of which trade or business was or was conducted within this state.

(b) Property that has been converted to nonbusiness use through the passage of a sufficiently lengthy period of time (generally, five (5) years shall be [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, shall be deemed to have (has) lost its character as a business asset.

[c] (and is not subject to the rule of the preceding sentence.) Property that was an integral part of the trade or business shall not be (is not) considered converted to investment purposes merely because it is placed for sale.

(2) (a) 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, shall be [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.

(b) Income from the holding 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, shall constitute [constitute] business income whether or not the licensing of the asset constituted the operation of a trade or business and whether or not the taxpayer engages 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 shall be [is] business income if the intangible property shall serve [serve] an operational function as opposed to a solely 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 shall not be satisfied if (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, [the] income from that property may be business income, even though the actual transaction or activity involving that property that gives rise to the income does not occur in Kentucky.

(5)(a) An item of property shall be presumed integral to the taxpayer's trade or business operations if the taxpayer:

1. Takes a deduction from business income that is appor-
(a) Income arising from an intangible interest as, for example, corporate stock or other intangible interest in a business or a group of assets, shall be [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.

(b) [Else] 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 a similar relationship shall not be [such a relationship as] the exclusive basis for concluding that the income is subject to apportionment. It shall be [is] sufficient to support the finding of apportioned income if the holding of the intangible interest served as an operational asset.

Section 5. Relationship of Transactions and Functional Tests to the U.S. Constitution: The Due Process Clause and the Commerce Clause of the U.S. Constitution generally bar income from intangible property from taxation absent a substantial nexus with the taxing state. Satisfaction of either the transactional test or the functional test shall comply with this constitutional requirement, because each test shall require 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 the state.

Section 6. For taxable years beginning after December 31, 2004, corporations defined in KRS 141.010(2)(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 in the event of any item of intangible or combination intangible income. If actual expenses, including interest, salaries, general and administrative, and other similar expenses, are not related to the nonbusiness or nontaxable income, they are not deductible from the nonbusiness or nontaxable income.

(a) Ratio of nonbusiness/nontaxable assets to total assets times interest expense. Interest expense shall represent expenses that are incurred in the stewardship or maintenance of nonbusiness or nontaxable assets. Other expenses may be used which more accurately 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 under paragraph (a) of this subsection [as-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 nonbusiness/nontaxable income to total gross receipts times interest expense, salaries, general administrative expenses, and other similar expenses. The sum of these or any reasonable combination of these expenses; or [and]

(e) A flat percentage, one (1) percent to 100 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 the nonbusiness income.

(2) KRS 141.010(13)(d) requires a corporation to relate expenses to nontaxable income. The formulas listed in subsection (1)(a) to (e) of this section of related expenses shall [be] used if the corporation is 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 formulas related to nontaxable income of the taxpayer are subject to review and possible adjustment even though one (1) of the formulas above was used.

The word "apportionment" generally refers to the division of net income among states by the formula containing the apportionment factor, and the word "allocation" generally refers to assignment of net income to a state.
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 business income. (c) Example: the corporation operates a multi-state money-order and traveler's check business. In addition to the lessee-received from leasing money-orders and traveler's checks, the corporation earns interest income by investing the funds pending their redemption. The interest income is business income.

(4) Example: the corporation operates a multi-state manufacturing and selling business. It usually has working capital and extra cash totaling $300,000 which it regularly invests in short-term interest-bearing securities. The interest income is business income.

(5) Example: in January the corporation sold all the stock of a subsidiary for $20,000,000. 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 business income.

(6) Dividends received after December 31, 1969, are excluded from Kentucky gross income by an amendment to KRS 441.010.

(7) Patent and copyright royalties. Patent and copyright royalties are business income if the patent or copyright was created or used as a integral part of the corporation's principal business.

(8) Example: the corporation operates a multi-state 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 received royalties. The royalties are business income.

(9) 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. Those acquired copyrights are then used in its business. Any royalties received on those copyrights are business income.

Section 9. [6.] Proration of Deductions. Any allowable deduction[s] that applies to both business and nonbusiness income or to more than one (1) ["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 is presented by the cabinet].

Section 9. Revenue Policy 41P150 [41P160] "Expenses Related to Nonbusiness Nontaxable Income" shall be [s] withdraw[n], since the policy has been incorporated into this administrative 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: May 12, 2006
FILED WITH LRC: May 12, 2006 at noon
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FINANCE AND ADMINISTRATION CABINET
Department of Revenue
Office of Income Taxation
(As Amended at ARRS, June 13, 2006)

103 KAR 16:000. Apportionment; payroll factor.

RELATES TO: KRS 141.010, 141.120
STATUTORY AUTHORITY: KRS 131.120(1), 141.018
NECESSITY, FUNCTION, AND CONFORMITY: KRS 141.120(8) requires that all business income of multi-state corpo-
nations 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). KRS 131.130(1) authorizes the department to promulgate administrative regulations to administer and enforce Kentucky's tax laws. This administrative regulation provides a detailed explanation of the payroll apportionment factor.

Section 1. Compensation. (1)(a) Compensation shall [does] not include payments to an independent contractor or any other person not properly classifiable as an employee.

(b) Only amounts paid directly to employees shall be [are] included in the payroll factor. Amounts considered paid directly shall 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 the [such] amounts constitute income to the recipient under KRS 141.010(12) and (13).

(2)(a) The total amount paid or payable for compensation during the taxable year shall be determined by the corporation's accounting method and shall be the same method used by the corporation for federal taxation purposes. If the corporation has adopted the accrual method of accounting, all compensation properly accrued shall be deemed to have been paid.

(b) 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 the cash method of accounting (1). 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: 86-272, codified as 15 U.S.C. § 381, 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) The total wages reported by the corporation to Kentucky for unemployment compensation purposes, except for compensation excluded by this administrative regulation, shall [may] be considered as a factor in determining if [whether] an employee's compensation is properly reportable to Kentucky. 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 the cash 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.

(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: May 12, 2006
FILED WITH LRC: May 12, 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

FINANCE AND ADMINISTRATION CABINET
Department of Revenue
Office of Income Taxation
(As Amended at AARRS, June 13, 2006)

103 KAR: 16:150. Apportionment and allocation: financial organizations and loan companies.

RELATES TO: KRS 141.120
STATUTORY AUTHORITY: KRS 131.130(1), 141.120(10)(b) [Chapter 13A]

NECESSITY, (AND) FUNCTION, AND CONFORMITY: KRS 141.120(10)(b) requires that the income of interstate businesses be allocated and apportioned, and also requires that the property and sales factors for allocations to financial organizations be determined in accordance with an administrative regulation promulgated by the department. This administrative regulation establishes the requirements for determining the property and sales factors needed for apportionment and allocation by financial organizations and loan companies (provides for the division of income of interstate business for tax purposes). The regulation incorporates the statute as it applies to the apportionment and allocation of interstate financial organizations and loan companies.

Section 1. General. For financial organizations and loan companies (if the primary business of the corporation is making loans), the business income earned within Kentucky shall be determined by a weighted fraction determined in accordance with KRS 141.120(10)(b) and this administrative regulation, the numerator of which is the weighted sales factor (fifty (50) percent), the weighted property factor (twenty-five (25) percent) plus the weighted payroll factor (twenty-five (25) percent), and the denominator of which is four (4).

Section 2. Sales Factor. The sales factor shall be [is] a fraction, the numerator of which shall be [is] all receipts derived from loans or other sources negotiated through offices located in Kentucky, and the denominator of which shall be [is] total business receipts.

Section 3. Outstanding Loan Balance Factor. The weighted property factor required by KRS 141.120(10)(b) shall be based on the outstanding loan balance factor determined in accordance with this section. The outstanding loan balance factor shall be [is] a fraction, the numerator of which shall be [is] the average balance of outstanding loans negotiated from offices in Kentucky. The denominator shall be [is] the average loan balance of all outstanding loans. The average outstanding loan balance shall be [is] determined at the beginning and end of the taxable period. [However, if the yearly beginning and ending balance results in an inequitable factor, the average outstanding loan balance may be computed on a monthly average basis.]

Section 4. Payroll Factor. The payroll factor shall be determined under the provisions of KRS 141.120(6)(b).

R.B. RUDOLPH, JR., Secretary
APPROVED BY AGENCY: April 4, 2006
FILED WITH LRC: April 6, 2006 at 2 p.m.
CONTACT PERSON: Angela Robinson, Staff Assistant, Finance and Administration Cabinet, Division of Legislative Services,
103 KAR 16:200. 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 131.130(1) authorizes the department to promulgate administrative regulations to administer and enforce Kentucky's tax laws. KRS 141.050(4) requires the Department of Revenue to promulgate administrative regulations and prescribe the forms and reports necessary for 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 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, 26 U.S.C. 1504(a)(2), 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, 26 U.S.C. 1504(a)(2).

(3) "Electoral period" is defined by KRS 141.200(2)(e), [means a period of ninety-six (96)-consecutive calendar months beginning on or prior to the due date of the return due for a taxable year that ends prior to January 1, 2005.

(b) Begining on January 1, 2005.

(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 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.

(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 [Gannett, 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 [paragraph] (b) and (c) 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, 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 141.200(3) 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 28 C.F.R. [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, 26 U.S.C.
1504(a), and related federal regulations that are not exempt from

Section 4. Carryover or Carryback of Items of Loss, Deduction
or Credit. (1) Carryover or carryback between a separate return
and 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 Reven-
ue Code, 26 U.S.C. 1502, and related federal 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, 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 Reven-
ue Code, 26 U.S.C. 1502, Code and related federal regulations; and
2. Adjusted for the differences between KRS Chapter 141 and
the Internal Revenue Code.

Section 5. Deferred Intercompany Transactions. If, during a
date 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, 2006 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
2005 Kys Acts ch. 168 [the 2005 General Assembly] 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-Licensee] Tax Return", Revenue Form 720, shall be filed as
required by 103 KAR 1:050, including with all applicable
schedules, and shall contain the following:
(a) Information identifying the affiliated group;
(b) The taxable income computation;
(c) The income tax computation;
(d) The 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 offi-
cer.
(2) "Kentucky Corporation Income [and-Licensee] Tax Return",
Revenue Form 720, Schedule A, Apportionment and Allocation,
shall be attached to Revenue Form 720, if applicable, and shall contain:
(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 tangi-
ble property.
(3) "Kentucky Affiliations and Payment Schedule", Revenue
Form 851-K, shall be attached to "Kentucky Corporation Income
[and-Licensee] 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.
(3)(a) A copy of the Federal Form 7004, "Application for Auto-
matic 6-Month Extension of Time to File Certain Business In-
come Tax, Information, and Other Returns" [Corporation In-
come-Tax Return], or "Application for Six (6) Month Extension
of Time to File Kentucky Corporation Income [and-Licensee] Tax Ret-
turn", Revenue Form 41A720SL, shall be filed to obtain an exten-
sion of time to file "Kentucky Corporation Income [and-Licensee]
Tax Return", Revenue Form 720, pursuant to the provisions of
KRS 131.061(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 subparagraph 1. of this paragraph (6)(c) 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. [F.] Filing a Consolidated Return. "Kentucky Corpo-
ration Income [and-Licensee] Tax Return", Revenue Form 720, shall
be filed as required by 103 KAR 1:050, including with all appli-
cable schedules, and 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-Licensee] 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. Cor-
poration Income Tax Return;
(e) Federal Form 851, Affiliations Schedule;
(f) Forms necessary to support credits reported on the consoli-
dated return;
(g) The schedules of gross income and deductions for each
member of the affiliated group prepared in a manner consistent in
accordance with 26 C.F.R. [Treasury Regulations-see.] 1.1502-76;
(h) Balance sheets for each member of the affiliated group
prepared in a manner consistent in accordance with 26 C.F.R. [Treasury
Regulations-see.] 1.1502-76;
(i) The schedules of receipts, property and payroll for each
member of the affiliated group shall be prepared in a manner consistent in
accordance with 26 C.F.R. [Treasury Regulations-see.] 1.1502-76;
(j) A copy of "Application for Six (6) Month Extension of Time to
Revenue Form 41A720SL or a copy of Federal Form 7004, Applica-
tion for Automatic 6-Month Extension of Time To File Certain
Business Income Tax, Information, and Other Returns [Corpo-
ration Income Tax Return].

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 for tax periods that end prior to De-
cember 31, 2005, "Kentucky Corporation Income [and-Licensee]
Tax Return", Revenue Form 720, reporting the consolidated return
computation shall report the separate Kentucky license tax com-
putation 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-
Licensee] Tax Return", Revenue Form 720, reporting the license tax
computation, shall be submitted with, but not attached to, the con-
solidated 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 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 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 expense deduction allowed under Sections 163 and 179 of the Internal Revenue Code, 26 U.S.C. 163 and 179, 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 154B Capitol Annex, Frankfort, Kentucky 40601, phone (502) 564-4240, fax (502) 564-6785.

FINANCE AND ADMINISTRATION CABINET
Department of Revenue
Office of Income Taxation
(As Amended at AARRS, June 13, 2006)

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

RELATES TO: KRS 131.130, 141.205
STATUTORY AUTHORITY: KRS 131.130(1)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 131.130(1) authorizes [141.050(4)] requires the Department of Revenue to promulgate administrative regulations (and procedures and reports) necessary to administer and enforce Kentucky's tax laws. KRS 141.205 [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 those 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 administrative regulation establishes the requirements for [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 or [add] the withholding of tax on interest, dividends, and royalties, for the prevention of double taxation of the respective residents, and the sharing of information.

(3) "Measured by, 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 net effect is 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 in the franchise," means:

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

(b) For a franchise tax, reported and included in the franchise apportioned or allocated to the taxing jurisdiction.
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(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:
(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; and
(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 shall be:
(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 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, as a state of commercial domicile, a net income tax, or a franchise tax, measured by, 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: May 12, 2006
FILED WITH LPC: May 12, 2006 at noon
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) 564-9565.

FINANCE AND ADMINISTRATION CABINET
Department of Revenue
Office of Income Taxation
(As Amended at ARRS, June 13, 2006)

103 KAR 16:240. Nexus standard for corporations and general partnerships.

FINANCE AND ADMINISTRATION CABINET
Department of Revenue
Office of Income Taxation
(As Amended at ARRS, June 13, 2006)

103 KAR 16:240. Nexus standard for corporations and general partnerships.

RELATES TO: KRS 141.010, 141.040, 141.205.
STATUTORY AUTHORITY: KRS 131.130, 141.018, 141.050(4)
NECESSITY, FUNCTION, AND CONFORMITY: [AND-FOCTION: 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 141.205 requires general partners doing business in Kentucky to file tax forms to compute the distribution of income to the general partners. KRS 131.130(1) authorizes [see] the Department of Revenue to promulgate administrative regulations for the administration and enforcement of the KRS 141.018 requires the Department of Revenue to promulgate administrative regulations necessary to implement KRS 141.102(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;
(c) The state where the intangible personal property is located if possession of 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 141.102(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, including:
Examples of the include:
(a) Maintaining an office or other place of business in Kentucky;
(b) Maintaining an office or other place of business 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 or leasing property 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 1362(c)(3)(B) of the Internal Revenue Code, 26 U.S.C. 1362(c)(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. 66-272, codified as 15 U.S.C. 381 to 384, shall be a factual determination. The examples in Sections [(H) 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(1), 3(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 not doing business in Kentucky, the taxpayer shall carry the burden of substantiating any claim that such 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 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; pre-emption of state laws. The administrative regulation adopts a narrower 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) Solicitation activities engaged in by a corporation or general partnership are both solicitation activities and in any other activity that is not a protected solicitation activity, it shall [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 sale of:

1. Sale 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 orders 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 or [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 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 the activity is de minimis within the meaning of Wisconsin Dept. of Revenue v. William Wright, 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 stale 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;
6. Telephone answering service that is publicly attributed to the company or to an employee or agent of the company in their representative status;
7. 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 shall not be [to-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 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;
2. The normal business 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;
3. The maintenance of any office or other place of business in this 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 384 or under this administrative regulation;
3. Entering into franchising or licensing agreements, selling or otherwise disposing of franchises and licenses, or 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
4. 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 provisions of KRS 141.010(25)(c) shall include the factors established in this section.
1. The activities listed in this subsection shall serve as examples of "doing business" under KRS 141.010(25)(c):
(a) Performing services in Kentucky, whether directly by the corporation or general partnership or indirectly by directing activity performed by a third party;
(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;
(h) 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)(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)(a) General.
1. 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.
2. 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. [H] 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, or
3. 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 in [en] 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 ranking 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.

FINANCE AND ADMINISTRATION CABINET
Department of Revenue
Office of Income Taxation
(As Amended at ARRS, June 13, 2006)


RELATES TO KRS 141.011, 141.200
STATUTORY AUTHORITY: KRS 131.130, 141.018
NECESSITY, FUNCTION AND CONFORMITY: KRS 131.130(1) authorizes [141.060(4)] requires the Department of Revenue to promulgate administrative regulations necessary to administer and enforce Kentucky’s tax laws [and prescribe the forms and report 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 KRS Chapter 141 [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 for a nexus consolidated-filer, a net operating loss carryforward computed under the provisions of Section 2(3) or (4) of this administrative regulation [guidelines provided in Section 2(3) or (4) of the administrative regulation].

(2) "Corporation" is defined by:
(a) KRS 141.200(2)(d) for an elective consolidated return; or
(b) KRS 141.010(24) for a separate or nexus consolidated return for periods beginning on or after January 1, 2005 (for elective consolidated returns means a corporation as defined in KRS 141.200(3)(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 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.

"Elective consolidated filer" means a corporation as defined in Section 7701(a)(3) of the Internal Revenue Code, 26 U.S.C. 7701(a)(3), filing in accordance with KRS 141.200(3) and (4).

(7) "Elective consolidated return" means a return defined under KRS 141.200(2)(b).

(8) "Includible corporation" is [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" is [means a return defined by [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 shall be applied to the net operating loss and [(that portion of the net operating loss allocable to the separately-defined apportionment factors)] the apportioned net operating loss shall be [as] available for carryforward.

(b) "Nexus consolidated filers" shall compute net operating loss for Kentucky purposes in accordance with this subsection [(the following manner)] the subsection.

(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 shall be [as] available as a Kentucky net operating loss carryforward, and shall be [as] available to be applied against the current year loss limitation for future taxable periods pursuant to KRS 141.200(11)(b).

(3) Separate return year rules for a nexus consolidated return. This subsection shall apply if [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 establishes how those separate net operating losses shall [are to be] 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 requirements [false] pursuant to KRS 141.200(11).

(b) 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 required by paragraph (c) of this subsection as described in paragraph (e) of this subsection is attached to the return.

(b) The net operating loss carryforward shall be adjusted to a pre-assignment 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. This subsection shall apply if [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 establishes how those elective consolidated net operating losses shall [are to be] 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 requirements [false] 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 provi-
visions of Section 1502 of the Internal Revenue Code, 26 U.S.C. 1502 and related federal 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-appointment basis unless an election is made to carry forward any post appointment losses 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 periods that generated the net operating loss, [then] that corporation’s share of the net operating loss shall not [earmarked] be carried forward to a nexus consolidated return.

(e) If [For those situations where the election period is] defined in KRS 141.200(2)(e) [9(4)] has expired and the elective consolidated return group is survived by one or more nexus consolidated groups, the requirements established in this paragraph shall apply.

1. Compute on a separate entity basis, the pre-appointment 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-appointment basis unless an election is made to carry forward any post appointment losses 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 shall be determined 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 loss amounts and[.]  

   c. Multiply the resultant percentage by the consolidated net operating loss carryforward.

4. Carry the loss carryforward amount calculated in subparagraph 3c of this paragraph [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. This subsection shall apply if [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 establishes how those elective consolidated operating losses shall [are to be] 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 requirements [rules] shall apply to this situation.

   1. Compute on a separate entity basis, the post-appointment 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 shall be determined 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 and[.]  

     d. Carry the separate entity loss computed in clause a to c of this subparagraph [Section 2(6)(a)(2)(c)(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. This subsection shall apply if [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, and will now be filing separate entity returns, and establishes how those nexus consolidated net operating losses shall [are to be] 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 requirements [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 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 each [the] separate corporation return [return(s)] reflecting this computation.

2. Each net operating loss corporation’s share of the net operating loss carryforward shall be determined in the following manner:

   a. Add all the separate entity computed losses together[.]  

   b. [3.] Divide each separate loss amount by the total consolidated loss amount[.]  

   c. [4.] Multiply the resultant percentage by the consolidated net operating loss carryforward and[.]  

   d. [5.] Carry the separate entity net operating loss carryforward computed in clauses a to c of this subparagraph [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 net operating loss deduction by KRS 141.040 that are owned by corporations as defined by KRS 141.010(24) shall be [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 LRSC: 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.

FINANCE AND ADMINISTRATION CABINET
Department of Revenue
Office of Income Taxation
(As Amended at ARRS, June 13, 2006)

103 KAR 18:270. Apportionment; sales factor.

RELATES TO: KRS 141.120, 141.040(5)(b), 141.206
STATUTORY AUTHORITY: KRS 131.130, 141.016, 141.120(10)(b)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 141.120(3) 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). KRS 141.120(10)(b) requires the cabinet to promulgate administrative regulations providing how to determine the sales factor used in the multi-state business income apportionment formula — 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 administrative regulation provides guidelines for determining the sales factor of a multistate corporation.

Section 1. Definition. (1) "Gross receipts" means the total amount of consideration, including cash, credit, property, and services, paid for the sale, lease, rental, or use of property.

Section 2. Gross receipts: Gross receipts include the total amount of consideration, including cash, credit, property, and services, paid for the sale, lease, rental, or use of property. The following shall be [are] examples of activities that result in the assignments of gross receipts to Kentucky shall be [are] included in the numerator described in KRS 141.120(10)(a) if the receipts are business income:

1. The sale, lease, rental, or other use of tangible personal property in this state (Activities that produce gross receipts as defined under KRS 139.050(4));
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 both 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 3. [2.] Assignment of Sales to Kentucky. (1) Sales of real or tangible personal property shall be [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 shall be [are] assigned to Kentucky if the property is shipped from Kentucky.
4. Receipts from intangibles shall be [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 shall be [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 shall be [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 shall be [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.
7. If the corporation has income from a general partnership, the distributive share income shall be included in the sales factor. The denominator shall include [is] the total distributive share; the numerator shall include [is] the amount of the distributive share apportioned to Kentucky pursuant to KRS 141.206(9).

Section 4. (1) [3.] Receipts from intangible property shall be [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.
2. In determining if possession and control is localized in connection with a trade or business, the following factors shall be considered:
3. The use of the intangible property in the continuous course of the trade or business in Kentucky;
4. The permanency of the location of the intangible property in Kentucky;
5. The independent control and management of the intangible property in Kentucky;
6. [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
7. 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 5. [4.] This administrative regulation shall apply to tax periods beginning on or after January 1, 2005.

R. B. RUDOLPH, Jr., Secretary
APPROVED BY AGENCY: May 12, 2005
FILED WITH LRC: May 12, 2006 at noon
CONTACT PERSON: Leslie Saunders, Division of Legislative Services, Finance and Administration Cabinet, Room 19SB Capitol Annex, Frankfort, Kentucky 40601, phone (502) 564-4240, fax (502) 564-6785.

FINANCE AND ADMINISTRATION CABINET
Department of Revenue
Office of Income Taxation
(As Amended at ARRS, June 13, 2006)

103 KAR 16:290. Apportionment; property factor.

RELATES TO: KRS 141.120
STATUTORY AUTHORITY: KRS 131.130(1), 141.120(10)(b)
[141.120(10)(b)] EFFECTIVE: February 10, 2006
NECESSITY, FUNCTION, AND CONFORMITY: KRS 141.120(b) 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). KRS 141.120(b) requires the cabinet to promulgate administrative regulations providing how to determine the property factor used in the multistate business income apportionment formula. This administrative 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.
(a) Annual rent includes:
1. [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; and
2. [and includes] 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.
(b) Annual rent [but does not include] 1. Amounts paid as service charges, such as utilities or janitorial services; and
2. [or] Incidental day-to-day expenses such as hotel or motel accommodations, or daily rental of automobiles. [If a payment includes rent and other charges, the amount of rent shall be determined by the relative values of the rent and the other items.]
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(2) "Annual rental rate" means:
(a) If the property is rented for a twelve (12) month period, the
annual rental.
(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 subleases.

(4) [44] "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 subse-
quent capital additions or improvements thereto and partial disposi-
tion 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 for sale, lease,
rent, or other similar transaction, for lease, or any other use or
standard facilities or property held for the purpose of providing the
essential source of materials shall be included in the factor. For example, a plant temporarily idle
or raw material reserves not currently being processed shall be
included in the factor.

(2) Inventory in process shall be included in the factor. Prop-
etory or equipment under construction during the taxable year shall
be excluded from the factor until it is actually used or is available
for use 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 consis-
tency. 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 inclusion of property in the property factor, the taxpayer shall disclose in its return to the state this state the nature and extent of the

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 in the desti-
nation location for purposes of the property factor.

(2) The value of mobile or movable property such as construc-
tion 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 value 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 nu-
merator 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 expenses 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 pur-
poses.

Section 7. Rented Property. (1) Annual rental rate shall be
determined as follows:
(a) If the property is rented for a twelve (12) month period,
the annual rental.
(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.

(2) 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 depart-
ment 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 cor-
poration's rental property. 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.

(3) [65] 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.

(4) [66] 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 expi-
ration 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
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FINANCE AND ADMINISTRATION CABINET
Department of Revenue
Office of Income Taxation
(As Amended at ARS, June 13, 2006)

103 KAR 18:300. Calculation of taxable net income for
disregarded single member LLCs.

RELATES TO: KRS 141.010, 141.208
STATUTORY AUTHORITY: KRS 131.130(1), 141.050(4),
141.018
NECESSITY, FUNCTION AND CONFORMITY: KRS 131.130(1) authorizes [141.060(4)-requires] the Department of Revenue to promulgate administrative regulations necessary to administer and enforce Kentucky's tax laws (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 KRS Chapter 141 [title chapters] on individuals, the passed-through income of entities taxable under KRS 141.040, and any related item of income, deduction, or credit. KRS 141.010, 141.040, and 141.208 require [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 administrative regulation explains how net taxable income shall [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 shall impose an imposed 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 shall be [also be] 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 doing business in Kentucky 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: May 12, 2006
FILED WITH LEGISLATIVE SERVICES: May 12, 2006 at noon
CONTACT PERSON: Leslie Saunders, Division of Legislative Services, Finance and Administration Cabinet, Room 153B, Capitol Annex, Frankfort, Kentucky 40601, phone (502) 564-4240, fax (502) 564-5965.

FINANCE AND ADMINISTRATION CABINET
Department of Revenue
Office of Income Taxation
(As Amended at AARRS, June 13, 2006)

103 KAR 16:310. Domestic production activity deduction.

RELATES TO: KRS 141.010(13), 26 U.S.C. 199, 26 C.F.R. 1.199-1, 1.199-5:

STATORY AUTHORITY: KRS 131.130(1)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 141.010(13) provides [requires] that net income, in the case of corporations, means gross income as defined in KRS 141.010(12) minus the deduction allowed by KRS 141.0202 and minus the deductions from gross income allowed corporations by Chapter 1 of the Internal Revenue Code, 26 U.S.C. Chapter 1, and as modified by KRS 141.0101, except the certain deductions listed in KRS 141.010(13). KRS 131.130(1) authorizes the department to promulgate administrative regulations to administer and enforce Kentucky's tax laws. Net income in the case of taxpayers other than corporations is defined in KRS 141.010(11). This administrative regulation explains the domestic production activity deduction as allowed by Internal Revenue Code 199, 26 U.S.C. 199.

Section 1. Definitions. (1) "Apportionment factor" is defined in KRS 141.120(3)(c) and computed for the separate return filer or the EAG and computed for the separate return filer or the EAG.

(2) "Corporations" means:
(a) For elective consolidated return filers, corporations as defined in KRS 141.200(2)(d); and
(b) For separate return filers or nexus consolidated return filers, corporations as defined in KRS 141.010(24).

(3) "DPAD" means domestic production activity deduction as defined in Internal Revenue Code 199, 26 U.S.C. 199.

(4) "DPGR" means domestic production gross receipts as defined in Internal Revenue Code 199, 26 U.S.C. 199.

(5) "EAG" means expanded affiliated group as defined in proposed regulation 1.199-7(a)(1), but shall not include corporations exempt from taxation pursuant to KRS 141.040(1).

(6) "Elective consolidated return filer" means those corporations as defined in Section 7701(a)(3) of the Internal Revenue Code, 26 U.S.C. 7701(a)(3), filing in accordance with KRS 141.200(3) and (4).

(7) "General Partnership" is defined in KRS 141.206(1)(a).

(8) "Internal Revenue Code" is defined in KRS 141.010(3).

(9) "Nexus consolidated return filer" means those corporations, as defined under KRS 141.010(24), filing in accordance with KRS 141.200(3) to (14), (19), (20), and (21).

(10) "QPAI" means qualified production activities income as defined in 26 C.F.R. [proposed regulation 1.199-1(c).

(11) "Separate return filer" means those corporations filing in accordance with KRS 141.200(10).

Section 2. Adoption of Internal Revenue Service Regulations. 26 C.F.R. 1.199-0 to 1.199-3 [Proposed Regulation 1.199-0 to 1.199-3] shall be adopted for the computation of the DPAD, except for the amendments and exceptions listed in Section 3 of this administrative regulation.

Section 3. Amendments and Exceptions. In computing the DPAD attributable to Kentucky, the following amendments and changes shall apply in Kentucky [are made to proposed regulation 1.169):

(1) For 26 C.F.R. [proposed regulation 1.199-1(b), the definition of taxable income for corporations shall be [are] defined by KRS 141.010(14) adjusted by KRS 141.011.

(2) 26 C.F.R. [Proposed regulation 1.199-2 is amended to add the following: W-2 wages shall be [are] computed pursuant to KRS 141.120(3)(b) and 103 KAR 16:090 16:095-16:099.

(3) For 26 C.F.R. [proposed regulation 1.199-3(b), the depreciation expense that is deducted in cost of goods sold shall be computed pursuant to KRS 141.0101 and as modified by KRS 141.0103.

(4) 26 C.F.R. [Proposed regulation 1.199-5(b) regarding S corporations shall [be] not be applicable.

Section 4. Application of the DPAD. (1) For corporations, the DPAD shall be computed as follows:
(a) Multiply the QPAI by the apportionment factor of the separate return filer or EAG.
(b) Multiply the applicable percentage in Internal Revenue Code 199, 26 U.S.C. 199, by the lesser of the amount computed in paragraph (a) of this subsection [Section 41(a) of this administrative regulation or the taxable income of the separate return filer or taxable income of the EAG as computed in Section 3(1) of this administrative regulation];
(c) The DPAD shall be limited by the amount of Kentucky W-2 wages as computed in Section 3(2) of this administrative regulation.
(d) Allocate the deduction pursuant to the provisions of 26 C.F.R. [proposed regulation 1.199-7, if the DPAD is based upon EAGs and (e) Take the DPAD after the net operating loss deduction in
computing taxable income.  
(2) For taxpayers other than corporations:  
(a) Full-year residents shall be allowed the federal deduction  
for DPAD.  
(b) Part-year or full-year nonresidents shall prorate the allowable federal deduction based upon the percentage of Kentucky DPGR to federal domestic production gross receipts, with a further limitation that the DPAD shall not exceed fifty (50) percent of Kentucky W-2 wages.  
(c) The DPAD shall be taken when computing Kentucky adjusted gross income.  

Section 5. General Partnerships. The distributive share of DPAD items shall be passed through to the individual partner.  

Section 6. This administrative regulation shall be effective for tax periods beginning on or after January 1, 2005.  

R.B. RUDOLPH, JR., Secretary  
APPROVED BY AGENCY: April 4, 2006  
FILED WITH LRC: April 6, 2006 at 2 p.m.  
CONTACT PERSON: Angela Robinson, Staff Assistant, Finance and Administration Cabinet, Division of Legislative Services, Room 195-B Capitol Annex, Frankfort, Kentucky 40601, phone (502) 564-4240 ext. 242, fax (502) 564-3894.  

FINANCE AND ADMINISTRATION CABINET  
Department of Revenue  
Office of Income Taxation  
(As Amended at ARRS, June 13, 2006)  

103 KAR 16:320. Claim of right doctrine.  
RELATES TO: KRS 141.010(13), 141.050, 26 U.S.C. 1341  
STATUTORY AUTHORITY: KRS 131.130(1)  
NECESSITY, FUNCTION, AND CONFORMITY: Internal Revenue Code 1341, 26 U.S.C. 1341, provides for an adjustment pursuant to the claim of right doctrine. KRS 141.010 determines a corporation's Kentucky net income KRS 131.130(1) authorizes the department to promulgate administrative regulations to administer and enforce Kentucky's tax laws. This administrative regulation interprets how the claim of right doctrine shall be applied to a Kentucky corporation income tax return.  

Section 1. Definition. "Internal Revenue Code" is defined in KRS 141.010(3).  

Section 2. General. If a corporation has made a claim of right adjustment in its federal tax return, a claim of right adjustment may be made to the Kentucky corporation income tax return in accordance with this section.  

(1) If the year the income or deduction was originally reported or deducted is still open under the statute of limitations, the claim of right shall be made by amending that year's corporation income tax return.  

(2) If the year the income or deduction was originally reported or deducted is closed, as the statute of limitations has expired, the claim of right shall be made in the same taxable year as the credit or deduction was claimed for federal purposes, subject to the following limitations:  
(a) The amount of the federal adjustment shall be adjusted for differences between the Internal Revenue Code and KRS (Kentucky Revised Statutes)  
(b) For example, if a corporation reported claim of right income of $1,000,000 in a prior year, which is closed by the statute of limitations, and apportioned twenty (20) percent of its business income to Kentucky, which resulted in additional Kentucky income tax liability of $12,000, then the adjustment for the claim of right shall not exceed $2,400 (12% x $1,000,000).  

(3) The claim is allowed, even though the corporation's business apportionment factor the year in which the claim is allowed is sixty (60) percent. This principle shall also apply if the tax rates differ between the applicable years.
FINANCE AND ADMINISTRATION CABINET
Department of Revenue
Office of Income Taxation
(As Amended at ARRS, June 13, 2006)

103 KAR 18:340. Apportionment and allocation; completed contract method.

RELATES TO: KRS 141.120.
STATUTORY AUTHORITY: KRS 131.130(1), 141.120
NEECESSITY, FUNCTION, AND CONFORMITY: KRS 141.120 provides for the division of income of interstate business for tax purposes. KRS 131.130(1) authorizes the department to promulgate administrative regulations to administer and interpret Kentucky’s tax laws. This administrative regulation explains how the business income apportionment factors shall be calculated when net income is reported on a completed contract basis.

Section 1. Definitions. (1) “Completed contract method of accounting” means a method of accounting whereby business income from long-term contracts is reported for the taxable year in which the contract is finally completed and accepted.

(2) “Long-term contracts” means contracts covering a period in excess of one (1) year from the date of execution of the contract to the date on which the contract is finally completed and accepted.

Section 2. General. If a corporation uses the completed contract method of accounting, the business income derived within Kentucky shall be determined by a weighted fraction, the numerator of which is the weighted sales factor fifty (50) percent, plus the weighted property factor twenty-five (25) percent plus the weighted payroll factor twenty-five (25) percent, and the denominator of which is four (4), as modified by the following special rules for business income derived from long term contracts established in Sections 3 to 7 of this administrative regulation.

Section 3. Sales Factor. The numerator and denominator of the sales factor shall be determined pursuant to KRS 141.120(8)(c) and the following special rules:

(1) Gross receipts derived from the performance of a contract shall be [are] attributable to Kentucky if the construction project is located in Kentucky. If the construction project is located partly within and partly without Kentucky, the gross receipts attributable to Kentucky shall be based upon the ratio which construction costs for the project in Kentucky incurred during the taxable year bear to the total of construction costs for the entire project during the taxable year.

(2) The sales factor shall include the portion of the gross receipts (progress billings) received or accrued, whichever is applicable, during the taxable year attributable to each contract.

Section 4. Property Factor. The numerator and denominator of the property factor shall be determined pursuant to KRS 141.120(8)(a) and the following special rules:

(1) The average value of the corporation’s costs (including materials and labor) of construction in progress, to the extent that the costs exceed progress billing (accrued or received, depending on whether the taxpayer is on the accrual or cash basis for keeping its accounts), shall be included in the denominator of the property factor.

(2) The value of any construction costs attributable to construction projects in this state shall be included in the numerator of the property factor.

(3) [g] Rent paid for the use of equipment directly attributable to a particular construction project shall be included in the property factor at eight (8) times the net annual rental rate even though the rental expense may be capitalized into the cost of construction.

Section 5. Payroll Factor. The numerator and denominator of the payroll factor shall be determined pursuant to KRS 141.120(8)(b) and the following special rules:

(1) Compensation paid employees which is attributable to a particular construction project shall be included in the payroll factor even though capitalized into the cost of construction.

(2) Compensation paid employees who, in the aggregate, perform most of their services in a state to which their employer does not report them for unemployment tax purposes, shall [nevertheless] be attributable to the state in which the services are performed.

Section 6. (1) The completed contract method of accounting shall require [requires] that the reporting of income (or loss) be deferred until the year in which the construction project is completed or accepted.

(2) Accordingly, a separate computation shall be [is] made for each contract completed during the taxable year, regardless of whether the project is located within or without Kentucky, to determine the amount of income which is attributable to sources within Kentucky.

(3) The amount of income from each contract completed during the taxable year apportioned to this state, plus other business income apportioned to this state by the regular three (3) factor formula such as interest income, rents, royalties, income from short-term contracts, etc., plus all nonbusiness income allocated to Kentucky, shall be the measure of tax for the taxable year.

(4) The amount of income (or loss) from each contract which is derived from sources within Kentucky using the completed contract method of accounting shall be computed as follows:

(a) [(4)] In the taxable year in which the contract is completed, the income (or loss) shall be [is] determined by paragraph (4) of this subsection [at-(4)-above] shall be apportioned to Kentucky by the following method:

1. [(a)] A fraction shall be [is] determined for each year during which the contract was in progress. The numerator shall be the amount of construction costs paid or accrued in each year during which the contract was in progress and the denominator shall be the total of all construction costs for the project.

2. [(b)] Each percentage determined by subparagraph 1 of this paragraph [(a)-above] shall be multiplied by the apportionment formula percentage for that particular year as determined in paragraph 2 of this administrative regulation.

Section 7. Computation for Year of Withdrawal, Dissolution or Cessation of Business. (1) Use of the completed contract method of accounting shall require [requires] that income derived from sources within Kentucky from incomplete contracts in progress outside Kentucky on the date of withdrawal, dissolution or cessation of business in Kentucky be included in the measure of tax for the taxable year during which the corporation withdraws, dissolves or ceases doing business in this state.

(2) The amount of income (or loss) from each contract to be apportioned to Kentucky by the apportionment method established in Section 6(4)(b) of this administrative regulation [set forth in Section 6(2)] of this administrative regulation shall be determined as follows:

(a) The amount of business income (or loss) for each contract shall be the amount by which the gross contract price from each contract which corresponds to the percentage of the entire contract which has been completed from the commencement thereof to the date of withdrawal, dissolution, or cessation of business exceeds all expenditures made during the period in connection with each contract.

(b) In so doing, account shall be taken of the material and supplies on hand at the beginning and end of the taxable year for use in each contract.

R.B. RUDOLPH, JR., Secretary
APPROVED BY AGENCY: April 4, 2006

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VOLUME 33, NUMBER 1 – JULY 1, 2006

FILED WITH LRC: April 6, 2006 at 2 p.m. CONTACT PERSON: Angela Robinson, Staff Assistant, Finance and Administration Cabinet, Division of Legislative Services, Room 109-B Capitol Annex, Frankfort, Kentucky 40601, phone (502) 564-4240 ext. 242, fax (502) 564-3694.

FINANCE AND ADMINISTRATION CABINET
Department of Revenue
Division of Income Taxation
(As Amended at ARRS, June 13, 2006)

103 KAR 17:060. Income subject to taxation; portions.

RELATES TO: KRS 141.010, 141.020
STATUTORY AUTHORITY: KRS 131.130(1), (13) [Chapter 43A]
NECESSITY, [AND] FUNCTION, AND CONFORMITY: KRS 131.130(1) authorizes the department to promulgate administrative regulations to administer and enforce Kentucky’s tax laws. KRS 141.020 establishes the income tax requirements for residents and nonresidents. This administrative regulation prescribes methods of determining the Kentucky portion of certain income tax deductions for nonresidents and part-year residents.

Section 1. Residents. The entire net income of a full-year resident individual shall be [are] subject to Kentucky income tax regardless of its source. Income from out-of-state sources shall [is] not be exempt. The adjustments to gross income and itemized deductions allowed under KRS 141.010(10) and (11) of a full-year resident shall [are] not be limited to those paid in Kentucky.

Section 2. Persons Becoming Residents During the Year. (1) Persons who become Kentucky residents during the year shall be [are] subject to Kentucky Individual Income tax upon their entire net incomes [income] from any source after becoming [a] Kentucky residents [resident] and upon their incomes [incomes] from Kentucky sources prior to becoming [a] Kentucky residents [resident].

(2) Except as provided in Section 6 of this administrative regulation for net operating loss deductions, persons [taxpayere] who become residents during the year shall be [are] limited to either:

(a) Adjustments to gross income and itemized deductions allowed pursuant to KRS 141.010(10) and (11) paid after becoming [a] Kentucky residents [resident]; or

(b) That portion of total adjustments to gross income and itemized deductions that Kentucky income bears to total income.

Section 3. Persons Becoming Nonresidents During the Year. (1) Persons who are Kentucky residents, but become nonresidents during the year, shall be [are] subject to Kentucky Individual Income tax upon their entire net incomes [income] from all sources while they are [a] Kentucky residents [resident], and upon their incomes [incomes] from Kentucky sources after becoming nonresidents [nonresident].

(2) Except as provided in Section 6 of this administrative regulation for net operating loss deductions, persons who become nonresidents during the year shall be [are] generally limited to either:

(a) Adjustments to gross income and itemized deductions allowed pursuant to KRS 141.010(10) and (11) paid while a Kentucky residents; or

(b) That portion of total adjustments to gross income and total itemized deductions allowed pursuant to KRS 141.010(10) and (11) that Kentucky income bears to total income.

Section 4. Nonresidents. (1) Any net income of a nonresident shall be [is] subject to Kentucky income tax if it is derived from services performed in Kentucky or from property located in Kentucky. Income from sources outside Kentucky shall [is] not be subject to Kentucky Income tax, [are not] exempt from Kentucky income tax, and no deduction shall be allowed for Federal, State, or local taxes incurred outside Kentucky.

(2) Except as provided in Section 6 of this administrative regulation for net operating loss deductions, the adjustments to gross income and [the] itemized deductions allowed pursuant to KRS 141.010(10) and (11) shall be [are] limited to that portion of adjustments to gross income and total itemized deductions that Kentucky income bears to total income.

Section 5. Allocation Based Upon Kentucky Income. If a deduction or an adjustment to gross income is allowable based upon the receipt of certain types of income and is limited to a maximum amount deductible for federal income tax purposes, the Kentucky income used to make the allocation shall be the same type of income used to allow the deduction on the federal return.

Section 6. Net Operating Loss Deduction. An individual resident, a part-year individual resident, or an individual nonresident shall compute the net operating loss deduction using Kentucky income and expenses allowed or allowable on the Kentucky return.

R. B. RUDOLPH, JR., Secretary
APPROVED BY AGENCY: April 4, 2006
FILED WITH LRC: April 6, 2006 at 2 p.m.
CONTACT PERSON: Angela Robinson, Division of Legislative Services, Finance and Administration Cabinet, Room 109-B Capitol Annex, Frankfort, Kentucky 40601, phone (502) 564-4240, fax (502) 564-3694.

FINANCE AND ADMINISTRATION CABINET
Department of Revenue
Division of Income Taxation
(As Amended at ARRS, June 13, 2006)

103 KAR 17:100. Division of Income between married individuals filing separate tax returns.

RELATES TO: KRS 141.020, [141.060] 141.300, 141.305
STATUTORY AUTHORITY: KRS 131.130(1), (13) [Chapter 43A]
NECESSITY, FUNCTION, AND CONFORMITY: KRS 131.130(1) authorizes the department to promulgate administrative regulations to administer and enforce Kentucky’s tax laws. This administrative regulation establishes the requirements [provides guidelines] for determining how income derived from joint ownership of property and self-employment is divided among married individuals filing separate tax returns.

Section 1. Income derived from the joint ownership of real property, tangible personal property, or [and] intangible property shall be divided equally by married individuals filing separate tax returns. Income derived from property not held jointly shall be attributable to its individual owner.

Section 2. Income derived from self-employment by a husband and wife filing separate tax returns.

(1) Income derived from self-employment by a husband and wife filing separate tax returns shall be divided according to the percentage amount of each spouse’s contribution of services and capital, unless self-employment taxes have been paid by each spouse separately, or a partnership agreement provides evidence of separate income.

(2) The following shall serve as an example.

<table>
<thead>
<tr>
<th></th>
<th>Capital Contributions</th>
<th>Services Contributions</th>
</tr>
</thead>
<tbody>
<tr>
<td>Husband</td>
<td>50%</td>
<td>75%</td>
</tr>
<tr>
<td>Wife</td>
<td>70%</td>
<td>25%</td>
</tr>
</tbody>
</table>

= 105% / 2 = 53%

= 95% / 2 = 47%

Section 3. If a joint declaration of estimated tax is made by a husband and wife, but a joint return is not made for the same taxable year, the joint estimated tax payments for the taxable year shall be divided in the same manner as provided under Internal Revenue Code Section 6655, 26 U.S.C. 6655.

R.B. RUDOLPH, JR., Secretary
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CONTACT PERSON: Angela Robinson, Staff Assistant, Divisi-
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Section of Legislative Services, Finance and Administration Cabinet, Room 155B Capitol Annex, Frankfort, Kentucky 40601, phone (502) 564-4220, fax (502) 564-3894.

FINANCE AND ADMINISTRATION CABINET
Department of Revenue
Office of Income Taxation
(As Amended at ARRS, June 13, 2006)

103 KAR 18:070. Supplemental wages and other payments subject to withholding.

RELATES TO: KRS 141.020, [141.206], 141.315, 26 U.S.C. 3402(a)

STATUTORY AUTHORITY: KRS 141.050(4), [141.206], 141.315

NECESSITY, FUNCTION, AND CONFORMITY: KRS 141.050(4) requires the Department of Revenue (Revenue Cabinet) 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 141.206 require] the department [cabinet] to promulgate administrative 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 winnings that are subject to withholding as defined by 26 U.S.C. 3402(a) of the Internal Revenue Code.

(2) "Lower-tier pass-through entity" means a member of a pass-through entity that itself is a pass-through entity.

(3) "Member" means a shareholder of an S corporation; a partner in a general partnership; a limited partnership; or a limited liability partnership; or a member of a limited liability company, 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 141.206.

(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 purposes.

(6) "Supplemental wages" means payments made to an employee by the individual's [his] employer in addition to regular wages.

Section 2. Gambling Winnings. Every person making a payment 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 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 distributive 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 40A201, "740NP-WH, Kentucky Nonresident Income Tax Withholding on Net Distributive Share Income Transmittal Report," reporting 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 40A206, "740PTE-WH, Kentucky Nonresident Income Tax Withholding on Net Distributive Share Income," or an approved substitute statement showing the member's net distributive share income subject to withholding and the amount of Kentucky income tax withheld; and
(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 requirements 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. (5) Vacation Pay. If an employee receives vacation pay for the time of a vacation absence, the vacation pay shall be [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 shall be [are] treated as supplemental wages.

[Section 6. Incorporation by Reference. (1) The following material is incorporated by reference:
(a) Revenue Form 40A201, "PTE-WH, Kentucky Nonresident Income Tax Withholding on Net Distributive Share Income," September 2003; and

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Revenue Cabinet, 200 Fails-Oakes 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 LHC: February 1, 2006 at 10 a.m.
CONTACT PERSON: Leslie Saunders, Division of Legislative Services, Finance and Administration Cabinet, Room 155B Capitol Annex, Frankfort, KY, 40501, phone (502) 564-4240, fax (502) 564-6765.
FINANCE AND ADMINISTRATION CABINET
Department of Revenue
Office of Income Taxation
(As Amended at ARRIS, June 13, 2006)

103 KAR 18:150. Partnership income, credits, and payments subject to withholding.

RELATES TO: KRS 141.010(10), 141.020, 141.020(8), 141.026, 141.300, 26 U.S.C. 7704(b)

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 authorizes [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 asportioned 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 asportioned 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 pay 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(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 141.330 may be [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 nonresident individual partner's net distributive share income is less than $1,000;

(b) The general partnership demonstrates that the nonresident 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;

(d) The nonresident individual partner elects to be included in a composite return filed by the general partnership under Section 3 of this administrative regulation.

(5) If withholding is required, the general partnership shall, or before the 15th day of the fourth month after the end of its taxable year file:

(a) File with the Kentucky Revenue Cabinet, Revenue Form 40A201, "740NP-WK, 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-WK, 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 the same requirements of this section 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 individual 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 42A740NP-740NP [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) A general partnership [General-Partnership] filing a composite return [composite returns] shall make estimated tax payments if required under the provisions of KRS 141.300.

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:

(a) Revenue Form 40A200, "PTE-WK, Kentucky Nonresident Income Tax Withholding on Net Distributive Share Income," September 2005;

(b) Revenue Form 40A201, "740NP-WK, Kentucky Nonresident Income Tax Withholding on Net Distributive Share Income Transmittal Report," September 2005; and

(c) Revenue Form 42A740-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, 2006
FILED WITH LRC: February 3, 2006 at noon
CONTACT PERSON: Leslie Saunders, Division of Legislative Services, Finance and Administration Cabinet, Room 1958 Capitol Annex, Frankfort, Kentucky 40601, phone (502) 564-2420, fax (502) 564-6785.
GENERAL GOVERNMENT CABINET
Board of Podiatry
(As Amended at ARRS, June 13, 2006)


RELATES TO: KRS 311.450(2)
STATUTORY AUTHORITY: KRS 311.410(4), 311.450(2)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 311.450(2) requires the board to promulgate an administrative regulation to establish continuing education requirements for a podiatrist. This administrative regulation establishes those continuing education requirements.

Section 1. (1) Each podiatrist licensed by the board shall annually complete twenty (20) [fifteen (15)] hours of continuing education relating to the practice of podiatry.

(2) The twenty (20) [fifteen (15)] hours [required pursuant to subsection (1) of this section] shall include:

(a) At least fifteen (15) Category A continuing education hours [up to twenty (20) but not fewer than fifteen (15)] hours in courses that meet the criteria of Category A outlined in Section 2 of this administrative regulation; and

(b) Not more than five (5) Category B continuing education hours in courses that meet the criteria of Category B outlined in Section 2 of this administrative regulation [to be taken from those programs approved or sponsored by the board].

(3) A continuing education hour shall equal fifty (50) clock minutes of participating in continuing education instruction or presentation that meets the requirements of this administrative regulation for continuing education courses.

(4) All Category A continuing education credits must be approved by the American Podiatric Medical Association's Council on Podiatric Medical Education (APMA/CPME), except that the course provider or the licensee that intends to take a course has made written application to the board for approval of the course prior to the presentation of the course under Section 6 of this administrative regulation, and the board has approved the course.

Section 2. Categories of Continuing Education Hours [Minimum Continuing Education Requirements]. (1) A Category A continuing education course shall be any course that is offered by a podiatric medical society, college, university, or other educational institution that meets the criteria of Category A outlined in Section 2 of this administrative regulation and is approved by the board under Section 6 of this administrative regulation.

(2) A Category B continuing education course shall be any course that is approved by the board under Section 6 of this administrative regulation and is approved by the American Podiatric Medical Association's Council on Podiatric Medical Education (APMA/CPME), except that if the course provider or the licensee that intends to take a course has not been approved by the board, the course must meet the criteria of Category B outlined in Section 2 of this administrative regulation and is approved by the board under Section 6 of this administrative regulation.

(3) A continuing education hour shall equal fifty (50) clock minutes of participating in continuing education instruction or presentation that meets the requirements of this administrative regulation for continuing education courses.

Section 3. (1) A licensee shall keep a valid record of each continuing education program completed. The record shall:

(a) Include a receipt or certification received for the program;

(b) Be kept for three (3) years, except for the continuing education records related to the course of study required by subsection (4) of this section on HIV, which shall be kept for twelve (12) years; and

(c) Be presented upon request by the board for audit. If selected by the board for audit, the licensee shall submit the requested proof of continuing education to the board within fifteen (15) days of the request.

(2) For Category A programs, include [the responsibility of the-licensee-to-show proof APMA/CPME certification or a written letter of approval from the board.

(3) The period during which continuing education courses shall be completed shall be from July 1 of each year until June 30 of the following year.

(4) Each licensee shall submit, with the annual renewal, a list of all accredited continuing education programs completed by the licensee during the previous license year. Failure to do so shall result in suspension or revocation of the license.

(5) Every ten (10) years, each licensed podiatrist shall successfully complete two (2) hours of continuing education which:

(a) Complies with the requirements of KRS 214.610(1); and

(b) Is approved by: 1. The Kentucky Cabinet for Health and Family Services pursuant to 902-KAR 2-160 as pertaining to the transmission, control, treatment, and prevention of the human immunodeficiency syndrome and acquired immunodeficiency syndrome, or 2. The board.

Section 4. (1) On application, the board shall consider granting a waiver of continuing education requirements or an extension of time within which to fulfill the requirements in the following cases:

(a) Medical disability of the licensee;

(b) Illness of the licensee or an immediate family member;

(c) Death or serious injury of an immediate family member.

(2) A written request for waiver or extension of time involving medical disability or illness shall be:

(a) Submitted by the person holding the license; and

(b) Accompanied by a document verifying the illness or disability signed by the:

1. Licensee's personal physician; or

2. Immediate family member's personal physician.

(3) A waiver of or extension of time within which to fulfill the minimum continuing education requirements shall not exceed one (1) year.

(4) If the medical disability of illness upon which a waiver or extension has been granted continues beyond the period of the waiver or extension, the licensee shall reapply for the waiver or extension.

Section 5. Inactive Status. (1) A licensee may apply for inactive status by submitting a written letter to the board.

(2) A licensee granted inactive status shall be relieved of the obligation to meet the requirements for continuing education established in this administrative regulation.

(3) A person on inactive status shall be permitted to use the term "podiatrist" but the licensee shall not be permitted to engage in the practice of podiatry. Any person who practices podiatry while on inactive status shall be deemed to be practicing podiatry without a license in violation of KRS 311.400.

(4) A licensee seeking reactivation from inactive to active status shall fulfill the following requirements:

(a) If the licensee has been inactive for no more than five (5) consecutive years, he shall:

1. Provide written notice to the board requesting reactivation to active status by filing a License Renewal Application and requesting that the license be made active;

2. Have completed twenty (20) [fifteen (15)] hours of Category A board-approved continuing education programs within a period of six (6) months preceding the request for active status, including the course on acquired immunodeficiency syndrome required by Section 3(4) of this administrative regulation; and

3. Pay:

(a) The renewal fee of $150 established in 201 KAR 25:021,
Section 1; and
b. A reactivation fee of $100.

(5) consecutive years, he shall:

1. File a completed Application for Examination in accordance with 201 KAR 25.011 and pay the required fee;
2. Be approved by the board to take the examination; and
3. Successfully complete a satisfactory examination before the board as provided by 201 KAR 25.012.

Section 6. Board Approval of Continuing Education. (1) A course provider or a licensee shall submit a written request to the board for approval of a continuing education course.

(2) A written request for board approval shall contain:
(a) A brief summary of the continuing education;
(b) The educational objectives of the continuing education;
(c) The date, time, and place of the provision of the continuing education;
(d) The name and credentials of the individual providing the continuing education; and
(e) The name of the organization providing the continuing education if applicable.

(3) In determining whether to approve continuing education, the board shall consider whether the continuing education:
(a) Is designed to provide current developments, skills, procedures, or treatments related to the practice of podiatry;
(b) Is developed and provided by an individual with knowledge and experience in the subject area; and
(c) Contributes directly to the professional competence of a licensee.

Section 7. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) *Application for Examination*, 4/00; and
(b) *License Renewal Application*, 4/00.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Podiatry, 906B S. 12th Street, Murray, Kentucky 42071-2947, Monday through Friday, 8 a.m. to 4:30 p.m.

STUART A. NAULTY, DPM, President
APPROVED BY AGENCY: December 3, 2005
FILED WITH LRC: April 14, 2006 at 11 a.m.

GENERAL GOVERNMENT CABINET
Board of Licensed Professional Counselors
(As Amended at ARRS, June 13, 2006)

201 KAR 36:030. Continuing education requirements.

RELATES TO: KRS 335.535(6)
STATUTORY AUTHORITY: KRS 335.515(3),(6), 335.535(8)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 335.515(3),(6) and 335.535(8) require the board to promulgate an administrative regulation requiring a licensee to complete continuing education requirements as a condition of renewal of his license. This administrative regulation delineates the requirements for continuing education and prescribes methods and standards for the accreditation of continuing education courses.

Section 1. Definitions. (1) *Academic courses* offered by an accredited postsecondary institution* means:

(a) A professional counseling course, designated by a professional counseling title or content; or
(b) An academic course, relevant to professional counseling.

(2) *Approved* means recognized by the Kentucky Board of Licensed Professional Counselors.

(3) *Continuing education hour* means fifty (50) minutes of participating in continuing educational experiences.

(4) *Program* means an organized learning experience:

(a) Planned and evaluated to meet behavioral objectives; and
(b) Presented in one (1) session or a series.

(5) *Provider* means an organization approved by the Kentucky Board of Licensed Professional Counselors for providing continuing education programs.

(6) *Relevant* means having content applicable to the practice of professional counseling as determined by the board.

Section 2. Accrual of Continuing Education Hours. (1) A minimum of ten (10) continuing education hours shall be accrued by each person holding a license during the annual period for renewal.

(2) All continuing education hours shall be in or related to the field of professional counseling.

Section 3. Methods of Acquiring Continuing Education Hours. Continuing education hours applicable to the renewal of the license shall be directly related to the professional growth and development of the licensee's practice of professional counseling. They may be earned by completing any of the following educational activities:

(1) Programs not requiring board review and approval. An educational program from any of the following providers shall be deemed to be relevant to the practice of professional counseling and shall be approved without further review by the board if it is:

(a) Sponsored or approved by:
1. The American Counseling Association, or any of its affiliated branches or divisions;
2. The Kentucky Counseling Association, or any of its affiliated chapters or divisions;
3. The National Association of Social Workers or any of its affiliated state chapters;
4. The American Association of Marriage and Family Therapy or any of its affiliated state chapters;
5. The American School Counselor Association or any of its affiliated state chapters;
6. The American Psychological Association, or any of its affiliated state chapters or divisions;
7. The divisions of the Department of Mental Health and Mental Retardation of the Kentucky Cabinet for Health Services; or
8. The National Board for Certified Counselors; or
(b) An academic course offered by an accredited postsecondary institution directed related to professional counseling or counseling psychology.

(2) Programs requiring board review and approval. A program from any of the following sources may be submitted and determined if it is relevant and therefore subsequently approved by the board:

(a) A program, including a home study course and in-service training provided by another organization, educational institution, or service provider approved by the board.

(b) A program or academic course presented by the licensee.

A presenter of relevant programs or academic courses may earn full continuing education credit for each contact hour of instruction, except the earned credit shall not exceed one-half (1/2) of the continuing education renewal requirements. Credit shall not be issued for repeat instruction of the same course; or

(c) Authoring an article in a relevant, professionally recognized or jurisprudence publication. Credit shall not be granted for an article unless it was published within the one (1) year period immediately preceding the renewal date and a licensee shall not earn more than one-half (1/2) of the continuing education hours required for renewal. More than one (1) publication shall not be counted during a renewal period.

(3) A general education course, either elective or designated to meet degree requirements, shall not be acceptable. Academic credit equivalency for continuing education hours shall be based on one (1) credit hour equals fifteen (15) continuing education hours.

Section 4. Procedures for Approval of Continuing Education Programs. A course, which has not been preapproved by the board, may be used for continuing education if approval is secured from the board for the course. In order for the board to adequately review these programs, the following information shall be submitted:

(1) A published course or similar description;
(2) Names and qualifications of the instructors;
(3) A copy of the program agenda indicating hours of education, coffee and lunch breaks;
(4) Number of continuing education hours requested;
(5) Official certificate of completion or college transcript from the sponsoring agency or college; and
(6) Application to the board for continuing education credits approved; and
(7) If a provider seeking approval for a continuing education course, an application review fee of twenty (20) dollars.

Section 5. Procedures for Preapproval of Continuing Education Sponsors and Programs. (1) Sponsor approval. Any entity seeking to obtain approval:
(a) Of a continuing education program prior to its offering shall apply to the board at least sixty (60) days in advance of the commencement of the program, and shall provide the information required in Section 4 of this administrative regulation on an annual basis for each program;
(b) As a prior-authorized continuing education provider under Section 3(1) of this administrative regulation, shall satisfy the board that the entity seeking this status:
1. Consistently offers programs which meet or exceed all the requirements set forth in Section 2(2) of this administrative regulation; and
2. Does not exclude a licensee from its programs.
(2) A continuing education activity shall be qualified for approval if the board determines the activity being presented:
(a) Is an organized program of learning;
(b) Pertains to subject matters, which integrate relate to the practice of professional counseling;
(c) Contributes to the professional competency of the licensee; and
(d) Is conducted by individuals who have educational training or experience acceptable to the board.

Section 6. Responsibilities and Reporting Requirements of a Licensee. (1) During the licensure renewal period, up to fifteen (15) percent of all licensees shall be selected at random by the board and required to furnish documentation of the completion of the appropriate number of continuing education hours. Verification of continuing education hours shall not otherwise be [by] reported to the board.
(2) A licensee shall:
(a) Be responsible for obtaining required continuing education hours;
(b) Identify his own continuing education needs and seek activities that meets those needs;
(c) Seek ways to integrate new knowledge, skills and attitudes;
(d) Select approved activities by which to earn continuing education hours; or
2. [e][f] Submit to the board,[if applicable,] a request for approval for continuing education activities not approved as required in Section 3(2) of this administrative regulation;
(f) At the time of renewal, list the continuing education hours obtained during that licensure renewal period;
(f) [g] Document attendance, participation in, and successful completion of continuing education activity for a period of one (1) year from the date of the renewal; and
(g) [h][i] Maintain records of continuing education hours, [j]
(3) The following items may be used to document continuing education activity:
(a) Transcript;
(b) Certificate;
(c) Affidavit signed by the Instructor; or
(d) Receipt for the fee paid to the sponsor;
(4) Comply with the provisions of this administrative regulation.
Failure to comply shall constitute a violation of KRS 355.439(1)(b) and shall result in sanctions in accordance with KRS 335.540(1)(335-340)(1)(b); and shall result in:
(a) Refusal to renew license;
(b) Suspension of license; or
(c) Repealment of license.

Section 7. Responsibilities and Reporting Requirements of Providers and Sponsors. (1) A provider of continuing education not requiring board approval shall be responsible for providing documentation, as established in Section 6(3)(b) of this administrative regulation, directly to the licensee.
(2) A sponsor of continuing education requiring board approval shall be responsible for submitting a course offering to the board for review and approval before listing or advertising that offering as approved by the board.

Section 8. Board to Approve Continuing Education Hours; Appeal of Denial. (1) If an application for approval of continuing education hours is denied, in whole or part, the licensee shall have the right to appeal the board's decision.
(2) An appeal shall be:
(a) In writing;
(b) Received by the board within thirty (30) days after the date of the decision; and
(c) Conducted in accordance with KRS Chapter 13B.

Section 9. Waiver or Extensions of Continuing Education. (1) On application, the board may grant a waiver of the continuing education requirements or an extension of time within which to fulfill the requirements in the following cases:
(a) Medical disability of the licensee;
(b) Illness of the licensee or an immediate family member; and
(c) Death or serious injury of an immediate family member.
(2) A written request for waiver or extension of time involving medical disability or illness shall be:
(a) Submitted by the person holding a license; and
(b) Accompanied by a verifying document signed by a licensed physician.
(3) A waiver or extension of time within which to fulfill the minimum continuing education requirements shall not exceed one (1) year.
(4) If the medical disability or illness upon which a waiver or extension has been granted continues beyond the period of the waiver or extension, the person holding a license shall rapsy for the waiver or extension.

Section 10. Continuing Education Requirements for Reinstatement or Revocation of License [Licensure]. (1) A person requesting reinstatement or revocation of a license shall submit:
Evidence of ten (10) hours of continuing education within the twelve (12) month period immediately preceding the date on which the request for reinstatement or revocation is submitted to the board; or
(b) Upon request by the applicant, the board may permit the applicant to resume practice, with the provision that he shall obtain the ten (10) hours of continuing education within three (3) months of the date on which the applicant is approved to resume practice.
(2) The continuing education hours received in compliance with this section shall be in addition to the continuing education requirements established in Section 2 of this administrative regulation and shall not be used to comply with the requirements of that section.

PEGGY LYNN KINETZ, Ed.D., Chair
R.B. RUDOLPH, JR., Secretary
APPROVED BY AGENCY: February 17, 2006
FILED WITH LRC: April 14, 2006 at 11 a.m.
CONTACT PERSON: John Parish, Executive Director, Kentucky Board of Licensed Professional Counselors, 911 Leawood Drive, Frankfort, Kentucky 40602; phone (502) 564-4233; fax (502) 564-4816.
GENERAL GOVERNMENT CABINET
Board of Licensed Professional Counselors
(As Amended at ARR, June 13, 2006)


RELATES TO: KRS 335.540(1)(6)
STATUTORY AUTHORITY: KRS 335.515(3), (7), (11)
NECESSITY AND FUNCTION: KRS 335 515(11) requires the board to promulgate a code of ethics for licensed professional counselors and licensed professional counselor associates. This administrative regulation establishes the required code of ethics.

Section 1. Definitions. (1) "Client" means:
(a) An individual, family, or group for whom the licensee provides services within the context of the licensee's practice of professional counseling;
(b) A corporate entity or other organization if the licensee provides a service of benefit directly to the corporate entity or organization; or
(c) A legal guardian who is responsible for making decisions relative to the provision of services for a minor or legally incompetent adult.

(2) "Dual relationship" means a social, business, or personal relationship between a licensee and a client that coexists with the professional-client relationship between the licensee and the client.

Section 2. Responsibility to Clients. (1) A professional counselor shall:
(a) Advance and protect the welfare of his client;
(b) Respect the rights of a person seeking his assistance; and
(c) Make reasonable efforts to ensure that his services are used appropriately.

(2) A professional counselor shall not:
(a) Discriminate against or refuse professional service to anyone on the basis of race, gender, religion, or national origin;
(b) Exploit the trust and dependency of a client;
(c) Engage in a dual relationship with a client that might:
   b. [1] Impair professional judgment;
   b. [2] Incur a risk of exploitation of the client; or
   c. [3] Otherwise violate a provision of this administrative regulation.

2. [4] If a dual relationship cannot be avoided, and does not impair professional judgment, incur a risk of exploitation of the client, or otherwise violate a provision of this administrative regulation, a professional counselor shall take appropriate professional precautions to ensure that judgment is not impaired and exploitation of the client does not occur, which shall include:
   a. [1] Written informed consent by the client of the client's (a) understanding of the general prohibitions against dual relationships;
   b. [2] Peer consultation by a licensed professional listed in 201 KAR 36:060, Section 3; and
   c. [3] Proper documentation of the precautions taken by the licensee.

(3) [5] Engage in a sexual or an intimate relationship with a current client or with a former client for five (5) [two-(2)] years following the termination of counseling.

(4) [6] Use his professional relationship with a client to further his own interests;

(5) [6] Continue therapeutic relationships unless it is reasonably clear that the client is benefiting from the relationship;

(6) [6] Fail to assist a person in obtaining other therapeutic services if the professional counselor is unable or unwilling, for appropriate reasons, to provide professional help;

(7) [6] Abandon or neglect a client in treatment without making reasonable arrangements for the continuation of treatment;

(8) [6] Videotape, record, or permit third-party observation of counseling sessions without prior obtaining written informed consent from the client;

(9) [6] Engage in sexual or other harassment or exploitation of his client, student, trainee, supervisee, employee, colleague, research subject, or actual or potential witness or complainant in investigations and ethical proceedings; or

[k] [6] Diagnose, treat, or advise on problems outside the recognized boundaries of his competence.

Section 3. Confidentiality. (1) A professional counselor shall respect and guard the confidences of each individual client.

(2) Professional counselors shall not disclose a client confidence except:
(a) Pursuant to KRS 202A.000, 620.030, or 645.270 or as otherwise mandated, or permitted by law;
(b) To prevent a clear and immediate danger to a person;
(c) During the course of a civil, criminal, or disciplinary action arising from the therapy, at which the professional counselor is a defendant; or
(d) In accordance with the terms of a written waiver. If more than one (1) person in a family receives counseling, a professional counselor shall not disclose information from a particular family member unless he has obtained a waiver from that individual family member. If the family member is a minor, a custodial parent or legal guardian may provide a waiver.

(3) A professional counselor may use client or clinical materials in teaching, writing, and public presentations if:
(a) A written waiver has been obtained in accordance with subsection (2)(d) of this section; or
(b) Appropriate steps have been taken to protect client identity and confidentiality;

(4) A professional counselor shall store or dispose of client records so as to maintain confidentiality.

Section 4. Professional Competence and Integrity. A professional counselor shall maintain standards of professional competence and integrity and shall be subject to disciplinary action in accordance with KRS 335.540:

(1) Upon conviction of a felony, or a misdemeanor related to his practice as a professional counselor; and

(2) Any other crime that he has not been convicted of but for which he was arrested or for which he was sanctioned by another state's regulatory agency that the board determines violates applicable Kentucky state law or administrative regulation;

(3) Upon a showing of impairment due to mental incapacity or the use of alcohol or other substances which could reasonably be expected to negatively impact the practice of professional counseling;

(4) If he misrepresented or concealed a material fact in obtaining a license, renewing a certificate, or remitting a license fee;

(5) If he has refused to comply with an order issued by the board;

(6) If he has failed to cooperate with the board by not:
   a. Furnishing in writing a complete explanation to a complaint filed with the board;
   b. Appearing before the board at the time and place designated; or
   c. Properly responding to subpoenas issued by the board.

Section 5. Responsibility to His Student or Supervisee. A professional counselor shall:
(1) Be aware of his influential position with respect to a student or supervisee;
(2) Avoid exploiting the trust and dependency of a student or supervisee;
(3) Try to avoid a social, business, personal, or other dual relationship that could:
   a. Impair professional judgment; and
   b. Increase the risk of exploitation;
   c. Take appropriate precautions to ensure that judgment is not impaired and to prevent exploitation if a dual relationship cannot be avoided;

[5] Not provide counseling to a:
   a. Student;
   b. Employee; or
   c. Supervisee;

[6] Not engage in sexual intimacy or contact with a:
   a. Student; or
(b) Supervise;
(7) Not permit a student or supervisee to perform or represent himself as competent to perform a professional service beyond his level of:
(a) Training;
(b) Experience; or
(c) Competence; and
(b) Not disclose the confidence of a student or supervisee unless:
(a) Pursuant to KRS 202A.400, 620.030, or 645.270 or as otherwise permitted or mandated by law;
(b) It is necessary to prevent a clear and immediate danger to a person;
(c) During the course of a civil, criminal, or disciplinary action arising from the supervision, at which the professional counselor is a defendant;
(d) In an educational or training setting, of which there are multiple supervisors or professional colleagues who share responsibility for the training of the student or supervisee; or
(e) In accordance with the terms of a written informed consent agreement.

Section 6. Financial Arrangements. A professional counselor shall:
(1) Not charge an excessive fee for service;
(2) Disclose his fees to a client and supervisee at the beginning of services;
(3) Make financial arrangements with a patient, third-party payor, or supervisee that:
(a) Are reasonably understandable; and
(b) Conform to accepted professional practices;
(4) Not offer or accept payment for a referral; and
(5) Represent facts truthfully to a client, third-party payor, or supervisee regarding services rendered.

Section 7. Advertising. (1) A professional counselor shall:
(a) Accurately represent education, training, and experience relevant to the practice of professional counseling; and
(b) Not use professional identification that includes a statement or claim that is false, fraudulent, misleading, or deceptive, including the following:
1. A business card;
2. An office sign;
3. Letterhead; and
4. Telephone or association directory listing.
(2) A statement shall be considered false, fraudulent, misleading, or deceptive if it:
(a) Contains a material misrepresentation of fact;
(b) Is intended to or likely to create an unjustified expectation; or
(c) Deletes a material fact or information.

Section 8. Referral and Termination. (1) A licensee shall make a timely and appropriate referral of a client if:
(a) The licensee is unable to provide the work or service, or
(b) The client's need exceeds the competency of the licensee.
(2) A licensee shall terminate a professional counseling service if a client:
(a) Has attained his stated goal or objective; or
(b) Falls to benefit from the counseling service.
(3) A licensee shall communicate the referral or the termination of counseling service to a client.
(4) A licensee shall not terminate counseling service or refer a client for the purpose of entering into a personal relationship with the client, including:
(a) A sexual or intimate[; romantic] relationship;
(b) A financial or business relationship; or
(c) Other activity that might serve a personal interest of the licensee.

PEGGY LYNN KINNETZ, Ed.D., Chair
ROBBIE RUDOLPH, Secretary
APPROVED BY AGENCY: February 17, 2006
FILED WITH LRC: April 14, 2006 at 11 a.m.

CONTACT PERSON: John Parish, Executive Director, Kentucky Board of Licensed Professional Counselors, 911 Leewood Drive, Frankfort, Kentucky 40602, phone (502) 564-4233, fax (502) 564-4818.

GENERAL GOVERNMENT CABINET
Kentucky Board of Licensed Professional Counselors
(As Amended at ARRS, June 13, 2006)

201 KAR 36:070. Education requirements.

RELATES TO: KRS 335.525(1)(c), (d), 335.527(1)(a)
STATUTORY AUTHORITY: KRS 335.515(1), (3)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 335.525(1)(c) requires that applicants for licensure shall have received a master's or doctoral degree in counseling or a related field from a regionally-accredited institution. KRS 335.525(1)(d) requires that applicants for licensure shall have sixty (60) graduate semester hours in specified areas. This administrative regulation establishes the educational requirements for licensure.

Section 1. (1) An applicant shall be deemed to have a degree in counseling if the applicant has completed an academic program of study where the name of the program or the major field of study contains the word "counseling".
(2) An applicant shall be deemed to have a degree in a related field if the applicant has completed an academic program of study that includes an organized sequence of graduate coursework in a minimum of five (5) of the nine (9) content areas established in KRS 335.525(1)(d) which includes a three (3) semester hour course in professional ethics and orientation in counseling.
(3) Degrees and graduate credit hours required under KRS 335.125(1)(d) shall be from a regionally-accredited institution.
(4) An institution shall be deemed to be a regionally-accredited institution if the institution of higher learning was accredited, when at the time the degree was conferred, by a regional accrediting body recognized by:
(a) U.S. Department of Education;
(b) Council on Postsecondary Accreditation; or
(c) Council on Postsecondary Education.

Section 2. (1) Except as provided by subsection (2) of this section, the practicum or internship required by KRS 335.525(1)(e) shall be completed within the organized sequence of study of the graduate degree of the applicant.
(2) If the degree held by the applicant did not include a 400 hour practicum or internship, the applicant shall have completed a graduate level practicum or internship at a regionally accredited university or college under the direction of a qualified graduate faculty member.

Section 3. After January 1, 2006, in order to meet the requirements of KRS 335.525(1)(d) or 335.527(1)(a), each applicant shall have completed a minimum of graduate course work in each area as follows:
(1) The helping relationship, including counseling theory and practice - six (6) semester hours, three (3) of which shall be in behavior management or behavior therapy;
(2) Human growth and development - six (6) semester hours in human development, personality or learning theory;
(3) Lifestyle and career development - three (3) semester hours in lifestyle and career counseling or vocational counseling;
(4) Group dynamics, process, counseling, and consulting - three (3) semester hours in group development, group dynamics, and group counseling theories;
(5) Assessment, appraisal, and testing of individuals - three (3) semester hours;
(6) Social and cultural foundation, including multicultural issues - three (3) semester hours;
(7) Principles of etiology, diagnosis, treatment planning, and prevention of mental and emotional disorders and dysfunctional behavior - three (3) semester hours in diagnosis and treatment planning which includes the appropriate use of the current edition
Section 4. On the following lakes, a person shall not operate a boat motor larger than ten (10) horsepower:

1. Shanty Hollow Lake, Warren County;
2. Bullock Pen Lake, Grant County;
3. Beitz Lake, Grant County;
4. Kincaid Lake, Pendleton County;
5. Elmer Davis Lake, Owen County;
6. Beaver Creek Lake, Anderson County;
7. Corinth Lake, Grant County; and
8. Swan Lake, Ballard County.

Section 5. A person shall not operate:

1. A boat motor larger than 150 horsepower on Lake Beshear, or Lake Malone; unless provided by subdivision 2 of this section.
2. At Lake Malone, motorboats with 200 horsepower or less shall be permitted from the first weekend after Labor Day through the first weekend prior to Memorial Day.

3. A motorboat faster than idle speed on:
   a. Carrico Lake, Nicholas County;
   b. Greenbo Lake, Greenup County;
   c. Pan Bowl Lake, Breathit County; or
   d. Wig Green Lake, Madison County.

Section 6. A person operating a boat motor larger than ten (10) horsepower shall not exceed idle speed at any time on the following lakes:

1. Herb Smith/Cranks Creek Lake; and

MARK S. Cramer, Deputy Commissioner
For DR. JONATHAN GASSETT, Commissioner

GEORGE WARD, Secretary
APPROVED BY AGENCY: March 3, 2006
FILED WITH LRC: April 14, 2006 at 10 a.m.
CONTACT PERSON: Rose Mack, Kentucky Department of Fish and Wildlife Resources, 1 Sportsman’s Lane, Frankfort, Kentucky 40601; phone (502) 564-7109, ext. 441, fax (502) 564-0506.
COMMERCETINABET
Department of Fish and Wildlife Resources
(As Amended at ARRS, June 13, 2006)

301 KAR 1:110. Prohibition on raising or hatching fish in public waters.

RELATES TO: KRS 150.025, 150.180(2)(T), 150.280 [146-660]
STATUTORY AUTHORITY: KRS 150.025, 150.280 [146-660]
-150-660
NECESSITY, FUNCTION, AND CONFORMITY: The purpose of this administrative regulation is to prohibit the raising or hatching of fish in public waters. It is necessary in order to protect the fish population.

Section 1. A person or organization shall not use public waters [No person or organization may use public waters in order] to raise or hatch fish or aquatic organisms for private or commercial purposes except as specified in Section 2 of this administrative regulation. This includes[...but is not limited to] cage culture of fishes.

Section 2. The commissioner may grant approval and issue a permit for paddlefish to be stocked and reared in approved water supply lakes for aquaculture purposes pursuant to 301 KAR 1:115, Section 6.

MARK S. CRAMER, Deputy Commissioner
For DR. JONATHAN GASSETT, Commissioner
GEORGE WARD, Secretary
APPROVED BY AGENCY: March 3, 2006
FILED WITH LFC: April 14, 2006 at 10 a.m.
CONTACT PERSON: Rose Mack, Kentucky Department of Fish and Wildlife Resources, 1 Sportsman’s Lane, Frankfort, Kentucky 40601, phone (502) 564-7109, ext. 441, fax (502) 564-6506.

COMMERCETINABET
Department of Fish and Wildlife Resources
(As Amended at ARRS, June 13, 2006)

301 KAR 1:115. Propagation of aquatic organisms.

RELATES TO KRS 150.025, 150.280, 150.290, 150.450, 150.485
STATUTORY AUTHORITY: KRS 150.025, 150.280
NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.280 provides that no person shall propagate or hold wildlife without a permit. This administrative regulation establishes the requirements for obtaining a permit and the requirements that shall be followed by permit holders.

Section 1. Definitions (1) [Definition,] "Aquatic organisms" means fishes, frogs, crayfish and other aquatic vertebrates and invertebrates.
(2) "Water supply lake" means a lake that is:
(a) Owned by a municipality or other public water supply entity;
(b) [and] Provides potable water supply for the public;
(c) [Not owned by the state; and]
(d) [Water-supply-lake=s-are-non-state-owned-and-are] Not managed by the department.

Section 2. Propagation Permit Requirements and Application Procedures. (1) Before acquiring or propagating aquatic organisms, a person shall obtain a permit.
(2) Permit applicants may obtain the Fisheries Commercial Propagation Application form from the department.

Section 3. Acquisition of Brood Stock from Public Waters. (1) A permit holder may obtain from public waters a maximum of 1,500 minnows or crayfish per surface acre of water used for propagation of a particular species.
(2) Each permit holder shall obtain brood stock from public waters no more than one (1) time for both minnows and crayfish.

(3) A wildlife and boating officer shall supervise the acquisition of brood stock from public waters.
(4) A permit holder [Permit holders] shall use gear authorized by 301 KAR 1:130, Live bait for personal use, to acquire aquatic organisms from public waters.
(a) Upon request at the time of application for a permit, the department may authorize an applicant [applicants] to use seines larger than ten (10) feet in length, gillnets, and other fish collection gears.
(b) Permit holders shall attach a metal tag, furnished by the department, to authorized seines over ten (10) feet, gillnets, and other fish collection gears showing:
1. The name of the owner;
2. Gear type; and
3. The date the permit expires.
(c) A permit holder [Permit holders] shall use those approved fish collection gears in waters designated in the application.

Section 4. [Repeal of Facilities and Revocation of Permits.]
(1) The permit holder shall allow a wildlife and boating officer to inspect his facilities.
(2) If the officer finds a violation of the terms of the administrative regulation, the department shall immediately revoke the permit.
(3) Fees paid for revoked permits shall not be refunded.

Section 5. [Sale of Aquatic Organisms. A permit holder [Permit holders] may sell propagated aquatic organisms.

Section 6. The department may issue a permit with no fee to elementary, middle and secondary schools and similar educational institutions if the propagated organisms are to be used for educational purposes.

Section 6. The commissioner may grant approval and issue a permit for paddlefish to be stocked and reared in approved water supply lakes for aquaculture purposes as provided for in 301 KAR 1:110 by completing a Fisheries Commercial Propagation Application and submitting it to the Fisheries Division.

(1) A municipality may allow a second party to rear paddlefish if the commissioner grants approval and issues a permit for paddlefish to be stocked and reared in an approved water supply lake.
(2) If a municipality or other public water supply entity allows a second party to rear paddlefish, a contractual agreement between the (2) granting permission to use the lake for rearing paddlefish shall be required for the extent of the rearing period. A copy of the contractual agreement shall be submitted to the department before a permit is issued.
(3) Water supply lakes that are currently open to sport fishing shall be required to remain open to sport fishing throughout the length of the rearing of paddlefish.
(4) Paddlefish shall be the only species permitted to be stocked in the approved water supply lakes.
(5) The number of paddlefish stocking events for each rearing period shall be limited to one (1) for each approved water supply lake. Commissioner approval may be granted and shall be obtained prior to any additional stocking events.
(6) The name of each water supply lake requested for consideration by approval as a rearing facility for paddlefish shall be listed on the propagation permit application.
(7) A propagation permit shall be obtained annually for each year of the paddlefish rearing period.
(8) The department shall not:
(a) [Wildfishe. Protect the protection of the podished paddlefish or]
(b) Establish establish paddlefish sport fish administrative regulations in any of the approved water supply lakes.
(9) Paddlefish that escape in the stream, either above or below the lake, shall not be considered property of the permit holder.
(10) The department shall not be responsible for corrective actions with any fish populations in the approved lakes used for aquaculture purposes.
(11) If a municipality rears paddlefish without a contractual agreement with a second party, it shall provide the department with a name of a person responsible for the rearing of the paddlefish in...
the approved water supply lakes.

(12) The permit holder that has been issued the Fisheries Commercial Propagation permit may use Gill nets to take paddlefish only from the lakes that have been approved and are listed on the propagation permit and shall be on site each time Gill nets are used in the approved water supply lakes.

(a) The Department shall notify at least one (1) week in advance of any harvest of paddlefish from the approved water supply lakes, including the random sampling of the stocked paddlefish that require the use of Gill nets.

(b) Gill nets shall only be used in the approved water supply lakes from December 1 through the last day of March.

(c) Gill nets shall not have a bar mesh size smaller than five (5) inches.

(d) Permit holders shall attach a metal tag provided by the department to each Gill net used.

(e) Paddlefish shall be the only species of fish harvested; any other species of fish captured shall be immediately released, without undue injury, to the waters where it was taken.

Section 7. Inspections of Facilities and Revocation of permits.

(1) The permit holder shall allow a conservation officer to inspect his facilities.

(2) The department shall

(a) Revoke the permit of a person found guilty of violating a statute or administrative regulation pertaining to propagation of fish and

(b) Not renew the propagation permit for a period of up to three (3) years of a person that has been found guilty of violating a statute or administrative regulation pertaining to propagation of fish.

(3) Fees paid for revoked permits shall not be refunded.

Section 8. Incorporation by Reference.


(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Fisheries, Department of Fish and Wildlife Resources, 11 Sportsman's Lane, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. and 4:30 p.m.

MARK S. CRAMER, Deputy Commissioner
For DR. JONATHAN GASSETT, Commissioner

GEORGE WARD, Secretary
APPROVED BY AGENCY: March 3, 2006
FILED WITH LRC: April 14, 2006 at 10 a.m.
CONTACT PERSON: Rose Mack, Kentucky Department of Fish and Wildlife Resources, 1 Sportsman’s Lane, Frankfort, Kentucky 40601, phone (502) 564-7103, ext. 441, fax (502) 564-0506.

COMMERCE CABINET
Department of Fish and Wildlife Resources
(As Amended at ARR'S, June 13, 2006)

301 KAR 1:122. Importation, possession; live fish.

RELATES TO: KRS 150.010, 150.120, 150.170, 150.175, 150.445, 150.450, 150.990

STATUTORY AUTHORITY: KRS 150.025
NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025 authorizes the department to promulgate administrative regulations regarding the taking of wildlife to carry out the purposes of KRS Chapter 150, including the protection and conservation of wildlife. This administrative regulation establishes the species of aquatic life which are prohibited in the Commonwealth.

Section 1. A (N) live fish, live minnow or live bait organisms, including a reproductive part thereof, not native or established in Kentucky waters shall not be imported, sold, possessed, imported, used or released into the waters of this Commonwealth, except as provided in Sections 2 and 4 of this administrative regulation.

Section 2. Exceptions. (1) Aquatic species except those in Section 3 of this administrative regulation may be imported, sold, or possessed in aquaria, but shall not be released directly or indirectly into the waters of this Commonwealth.

(2) Triploid (sterile) grass carp (Ctenopharyngodon idella) may be imported, sold, or possessed provided the proper permit is obtained as provided in 301 KAR 1:171.

(3) Diploid (fertile) grass carp may be imported and possessed only by certified propagators for the exclusive purpose of producing triploid grass carp.

(4) Other nonnative fishes may be imported, possessed, and sold with the approval of the Division of Fisheries.

Section 3. The following live aquatic organism shall not be imported, sold, or possessed in aquaria:

(1) Subfamily Serrasalmidae [Serrasalmidae] - piranha, piraya, pira, pira, and tiger characins.

(2) Astyanax [filiatus] mexicanus - Mexican banded tetra,
Mexican minnow or Mexican tetra.

(3) Petromyzon marinus [marinus] - sea lamprey.

(4) Genus Opsilates - walking catfish.

(5) Genus Cichla sp - Channa - snakeheads of Asia and Africa.

(6) Drassena polymorpha - zebra mussel.

Section 4. Commissioner Approval. The commissioner may permit the importation of a banned aquatic species if the applicant demonstrates that the species shall be used for legitimate scientific or educational purposes.

MARK S. CRAMER, Deputy Commissioner
For DR. JONATHAN GASSETT, Commissioner

GEORGE WARD, Secretary
APPROVED BY AGENCY: April 14, 2006
FILED WITH LRC: April 14, 2006 at 10 a.m.
CONTACT PERSON: Rose Mack, Kentucky Department of Fish and Wildlife Resources, 1 Sportsman’s Lane, Frankfort, Kentucky 40601, phone (502) 564-7103, ext. 441, fax (502) 564-0506.

COMMERCE CABINET
Department of Fish and Wildlife Resources
(As Amended at ARR’S, June 13, 2006)

301 KAR 1:150. Waters open to commercial fishing.

RELATES TO: KRS 150.010, 150.120, 150.170, 150.175, 150.445, 150.450, 150.990

STATUTORY AUTHORITY: KRS 150.025
NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025 authorizes the department to promulgate administrative regulations establishing the procedures for taking fish and the areas where fishing may be taken. This administrative regulation establishes the areas where commercial fishing is permitted.

Section 1. Commercial Fishing Waters. (1) The following streams and rivers shall be open to commercial fishing.

(a) Barren River from its junction with Green River upstream to Green Castle, Kentucky;

(b) Big Sandy River from its junction with the Ohio River upstream to the junction of the Levisa and Tug Forks;

(c) Levisa Fork from its junction with the Big Sandy River upstream to 200 yards below the mouth of Paint Creek in Johnson County;

(d) Cumberland River from its junction with the Ohio River upstream to the Highway 62 bridge;

(e) Eagle Creek from its junction with the Kentucky River upstream to the Highway 22 bridge in Grant County;

(f) Green River from its junction with the Ohio River upstream to 200 yards below Lock and Dam 6;

(g) Highland Creek from its junction with the Ohio River upstream to the Rock Ford Bridge in Union County;

(h) Kentucky River from its junction with the Ohio River upstream to the junction of the North and Middle Forks of Kentucky River;

(i) North Fork of the Kentucky River from its junction with the
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Kentucky River upstream to the mouth of Walker's Creek;

(i) South Fork of the Kentucky River from its junction with the Kentucky River upstream to the mouth of Cow Creek;

(k) Licking River from its junction with the Ohio River upstream to a point directly adjacent to Highway 111 on the Bath and Fleming Counties line;

(l) Mississippi River from the mouth of the Ohio River downstream to the Tennessee line;

(m) Ohio River from its junction with the Mississippi River upstream to the West Virginia state line except those segments of the river that extend below the following locks and dams where silt baskets are the only piece of commercial gear allowed except for the first 200 yards below the dam as prescribed by KRS 150.445:

1. Lock and Dam 3 downstream to a line perpendicular with the end of the longest lock wall including the circular cell portion.

2. Lock and Dam 52 downstream to a line perpendicular with the end of the longest lock wall including the circular cell portion.

3. Smithland Dam downstream to a line perpendicular to the end of the outer lock wall.

4. J.T. Myers Dam downstream to a line perpendicular to the end of the outer lock wall.

5. Newburgh Dam downstream to a line perpendicular to the end of the outer lock wall.

6. Cannelton Dam downstream to a line perpendicular to the end of the outer lock wall.

7. McAlpine Dam downstream to the K&I railroad bridge.

8. Markland Dam downstream to a line perpendicular to the end of the outer lock wall.

9. Meldahl Dam downstream to a line perpendicular to the end of the outer lock wall.

10. Greenup Dam downstream to a line perpendicular to the end of the outer lock wall.

(a) Pond River from its junction with the Green River upstream to the Highway 82 bridge;

(b) Panther Creek from its junction with the Green River upstream to the head of the creek;

(c) Rough River from its junction with the Green River upstream to the Highway 89 bridge at Dundee, Kentucky.

(d) Tennessee River from its junction with the Ohio River upstream to River Mile 17.8;

(e) Tradewater River from its junction with the Ohio River upstream to the Highway 565 bridge; and

(f) Salt River from its junction with the Ohio River upstream to the northwestern boundary of FL Knox.

(2) Lakes. The following lakes are open to commercial fishing, but not above the first shall or riffle upstream from the impounded or natural pool of the lake in any main or tributary stream except as specified in subsection 3, noted below:

(a) Barkley;

(b) Cumberland Lake is closed above the confluence of Koger Creek on the Big South Fork Tributary:

(i) Harrington;

(ii) Mayfield;

(iii) Nolin;

(iv) Buffalo.

1. Shall be open to commercial fishing through February 28, 2011.

2. Only those persons reporting commercial harvest from Nolin River Lake from March 1, 2000 through February 28, 2006, shall be permitted to commercially fish Nolin River Lake.

(a) (i) Rough River;

(ii) St. Euclid Creek;

(iii) Sugar Creek.

1. Shall be open to commercial fishing through February 28, 2011.

2. Only those persons reporting commercial harvest from Rough River Lake from March 1, 2000 through February 28, 2006, shall be permitted to commercially fish Rough River Lake.

(3) Exceptions.

(a) Cumberland Lake shall be [e] closed to commercial fishing above the confluence of Koger Creek on the Big South Fork Tributary.

(b) Permanent overflow takes adjacent to the Mississippi and Ohio Rivers that may prevent access from either river by a boat during high flow conditions shall be [e] closed to statewide com-

mercial fishing during these high flow events except as prohibited on department wildlife management areas in 301 KAR 4:050 and 301 KAR 4:020.

(c) Permanent overflow takes along the Mississippi and Ohio rivers when access from either river by a boat is not possible; 1. A no-charge commercial Asian carp removal permit shall be obtained following landowner and Fisheries Division approval to remove any rough fish, except catfish and pike.

2. Only licensed commercial fishermen shall be eligible for the permit.

3. Permit holders shall follow all gear restrictions listed in 301 KAR 1:146 and requirements described in 301 KAR 1:155.

4. The permit shall be valid for a period of ninety (90) days from the date of issuance.

Section 2. Incorporated by Reference, (1) List of commercial fishermen reporting harvest of fish from Nolin River and Rough River lakes from March 1, 2000 through February 28, 2006, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Fish and Wildlife Resources, #1 Sportsman's Lane, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

(3) Overflow takes directly connected to the Mississippi and Ohio Rivers:

(a) Dowey Lake is open upstream to Buffalo Bridge, and

(b) Barry Lake.

MARK S. CRAMER, Deputy Commissioner
For DR. JONATHAN GASSETT, Commissioner

GEORGE WARD, Secretary
APPROVED BY AGENCY: December 9, 2005
FILED WITH LRC: April 14, 2006 at 10 a.m.
CONTACT PERSON: Rose Mack, Kentucky Department of Fish and Wildlife Resources, 1 Sportsman's Lane, Frankfort, Kentucky 40601, phone (502) 564-7109, ext. 441, fax (502) 564-0506.

COMMERCE CABINET
Department of Fish and Wildlife Resources
(As Amended at ARR, June 13, 2006)

301 KAR 1:201. Fishing limits.

RELATES TO: KRS 150.470, 150.990(2)
STATUTORY AUTHORITY: KRS 150.025(1), 150.470
NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) authorizes the department to promulgate administrative regulations to protect fish species from overharvest, allocate their harvest, maintain ecological balance and improve fishing. This administrative regulation establishes fish size limits, daily catch limits, and field possession limits for fishing.

Section 1. Definitions. (1) "Artificial bait" means a lure or fly:

(a) Made of:

1. Wood;

2. Metal;

3. Plastic;

4. Feathers;

5. Preserved pork rind; or

6. A similar inert material, and

(b) Not having attached:

1. An insect;

2. Minnow;

3. Fish egg;

4. Aworm;

5. Corn;

6. Cheese;

7. Salt; or

8. Similar organic bait substance including dough bait, putty or paste-type bait designed to attract fish by taste or smell.

(2) "Chumming" means placing materials upon which fish might eat in the water for the purpose of attracting fish to a particular area in order that they might be taken.

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(3) "Cull" means to replace a fish in the [veg] daily creel limit with another fish of the same species.

(4) "Daily limit" or "creel limit" means the maximum number of a particular species or group of species a person may legally take in one (1) day or have in possession while fishing.

(5) [69] "Daylight hours" are defined by KRS 150.010(6).

(6) [69] "Kentucky bass" means the following with a patch of teeth on its tongue:
   (a) Largemouth bass;
   (b) Kentucky bass; or
   (c) Coosa bass.

(2) [66] "Lake" means impounded waters from the dam upstream to the first rifle on the main stem river and tributary streams.

(8) [66] "Length" means the distance of a fish which is measured while laid flat on a ruler with the mouth closed and tail lobes squeezed together.

(2) (49) "Possession limit" means the maximum number of fish a person may hold in the field after two (2) or more days of fishing.

(10) (69) "Release" means to return a fish:
   (a) In the best possible physical condition;
   (b) Immediately after removing the hook;
   (c) To the water from which it was taken; and
   (d) In a place where the fish's immediate escape shall not be prevented.

(11) (69) "Seasonal catch and release for trout season" means a trout stream with a specific time period when no trout shall be harvested or possessed and where the use of artificial bait is the only bait permitted.

(12) (49) "Single hook" means a hook with no more than one point.

(12) (49) "Size limit" means the minimum legal length of a fish.

(14) (49) "Slot limit" means that a person:
   (a) Shall release fish within a specified minimum and maximum size;
   (b) May keep fish above and below the protected size range.

Section 2. Statewide Size and Creel Limits. (1) Except as specified in Section 4 of this administrative regulation or by 301 KAR 1:160, a person fishing in public or private waters shall observe the following daily possession and size limits.

(a) Black bass: daily limit, six (6), possession limit, twelve (12).

1. Largemouth bass and smallmouth bass: size limit, twelve (12) inches.

2. Kentucky bass and Coosa bass: no size limit.

(b) Rock bass: daily limit, fifteen (15); possession limit, thirty (30); no size limit.

(c) (So) Saugere, walleye, and their hybrids: daily limit, singly or in combination, six (6); possession limit, twelve (12); size limit, walleye and their hybrids, fifteen (15) inches; no size limit for sauger.

(d) Muskellunge: daily limit, one (1), possession limit, two (2); size limit, thirty (30) inches.

(e) Chain pickerel: daily limit, five (5); possession limit, ten (10); no size limit.

(f) White bass, hybrid striped bass, and yellow bass, singly or in combination: daily limit, fifteen (15); possession limit, thirty (30); size limit, no more than five (5) fish in a daily limit or ten (10) fish in a possession limit shall be fifteen (15) inches or longer.

(g) Striped bass: daily and possession limit, five (5); size limit, fifteen (15) inches.

(h) Crappie: daily limit, thirty (30); possession limit, sixty (60); no size limit.

(i) Rainbow trout and brown trout, singly or in combination: daily and possession limit, eight (8), no more than three (3) of which shall be brown trout; no size limit on rainbow trout; twelve (12) inch size limit on brown trout.

(j) Redear sunfish: daily limit, twenty (20); possession limit, forty (40); no size limit.

(k) (2) A person shall release grass carp caught from a lake owned or managed by the department.

(3) A person shall release fish:
   (a) Below the minimum size limits established by this administrative regulation;
   (b) Within a protected slot limit established by this administrative regulation;
   (c) Of a particular species, if a person has in his possession the daily limit for that species established by this administrative regulation.

(4) A person shall not remove any part of the head or tail of a fish for which there is a size or creel limit until he has completed fishing for the day and has left the water.

(5) A person who wishes to possess sport fish below the size limit or beyond the possession limit shall:
   (a) Obtain the fish from a licensed fish propagator or other legal source; and
   (b) Retain a receipt or other written proof that the fish were legally acquired.

(6) A person shall release trout unless he:
   (a) Has a valid trout permit;
   (b) Is exempted from trout permit requirements by KRS 150.170(3); or
   (c) Is fishing in a licensed pay lake stocked with trout by the lake operator.

Section 3. Fishing Season. The fishing season shall be open year round.

Section 4. Exceptions to Statewide Administrative Regulations. A person fishing in the waters listed in this section shall observe the following special requirements. Except as specified in this section, all other provisions of this administrative regulation shall apply to these bodies of water.

(1) Bed Branch, Letcher County. A person shall not fish except with an artificial bait with a single hook.

(a) Largemouth bass and smallmouth bass: size limit, fifteen (15) inches.

(b) Crappie: size limit, ten (10) inches.

(c) Sauger: size limit, fourteen (14) inches.

(3) Barren River Lake, Including:
   (a) Barren River to the Highway 100 bridge;
   (b) Long Creek to the Highway 100 bridge;
   (c) Beaver Creek to the Highway 1237 bridge;
   (d) Kentucky River to the Mathews Mill Road bridge; and
   (e) Peter Creek to the Peter Creek Road bridge:

(1) Crappie: size limit, nine (9) inches.

2. Largemouth bass and smallmouth bass: size limit, fifteen (15) inches. Daily limit may include no more than one (1) and the possession limit no more than two (2) fish less than fifteen (15) inches.

(4) Beaver Lake.

(a) Largemouth bass: size limit, fifteen (15) inches.

(b) Channel catfish: size limit, twelve (12) inches.

(c) A person shall not possess shad or use shad for bait.

(5) Bert Combs Lake. A person shall not possess shad or use shad for bait.

(6) Beshears Lake: channel catfish: size limit, twelve (12) inches.

(7) Boltz Lake.

(a) A person shall not possess shad or use shad for bait.

(b) Channel catfish: size limit, twelve (12) inches.

(8) Biggs Lake. A person shall not possess shad or use shad for bait.

(9) Buckhorn Lake.

(a) Largemouth bass and smallmouth bass: size limit, fifteen (15) inches.

(b) Muskellunge: size limit, forty (40) inches.

(c) Crappie size limit, nine (9) inches.

(10) Bullock Pen Lake: channel catfish: size limit, twelve (12) inches.

(11) Camico Lake: largemouth bass, size limit fifteen (15) inches.

(12) Carpenter Lake. A person shall not possess shad or use shad for bait.

(13) Carr Creek Lake.

(a) Largemouth bass and smallmouth bass: size limit, fifteen (15) inches.
(b) Crappie: size limit, nine (9) inches.
(14) Carter Caves State Park Lake.
(a) Fishing shall be during daylight hours only.
(b) Largemouth bass: daily limit, three (3) fish; possession limit six (6) fish; size limit, fifteen (15) inches.
(c) A person shall not possess shad or use shad for bait.
(15) Cave Run Lake.
(a) Largemouth bass: slot limit - a person may keep fish less than thirteen (13) inches or greater than sixteen (16) inches and shall release fish between thirteen (13) and sixteen (16) inches.
(b) Smallmouth bass: size limit, sixteen (16) inches.
(16) Cedar Creek Lake.
(a) Largemouth bass: size limit, twenty (20) inches; daily limit: one (1) fish.
(b) Crappie: size limit, nine (9) inches; daily limit: fifteen (15) fish.
(c) Bluegill and Redear sunfish (shellcracker): daily limit: thirty (30) fish, singly or combined.
(d) Channel catfish: size limit, twelve (12) inches; daily limit: four (4) fish.
(e) A person shall not possess shad or use shad for bait.
(17) Chaffin Top Creek.
(a) Brown trout: size limit, sixteen (16) inches; creel limit, one (1), artificial bait only.
(18) Corinth Lake.
(a) A person shall not possess shad or use shad for bait.
(b) Channel catfish: size limit, twelve (12) inches.
(19) Cumberland Lake.
(a) Largemouth bass: size limit, fifteen (15) inches.
(b) Smallmouth bass: size limit shall be eighteen (18) inches.
(c) Striped bass: size limit, twenty-four (24) Inches; daily and possession limit, two (2) fish.
(d) Crappie: size limit, ten (10) inches.
(20) Cumberland River downstream from Barkley Lake Dam.
Sauger: size limit, fourteen (14) inches.
(21) Cumberland River from Wolf Creek Dam downstream to the Kentucky-Tennessee state line and tributaries.
(a) Brown trout: size limit (no limit), twenty (20) inches; creel limit, one (1);
(b) Rainbow trout: slot limit (no limit), fifteen (15) to twenty (20) inches; creel limit five (5) fish, which shall not include more than one (1) fish greater than twenty (20) inches; and
(c) A trout permit shall be required to fish the Cumberland River below Wolf Creek Dam to the Tennessee state line including the Hatchery Creek and all other tributaries upstream to the first riffle.
(d) Chumming shall not be permitted in the Cumberland River below Wolf Creek Dam to the Tennessee state line including the Hatchery Creek and other tributaries upstream to the first riffle.
22) Cypress MAXX (currently owned by Addington Enterprises) and Robinson Forest Wildlife Management Areas. On impounded waters of the area:
(a) Largemouth bass: size limit, fifteen (15) Inches; daily limit three (3); possession limit, six (6).
(b) Sunfish: daily limit, fifteen (15); possession limit, thirty (30).
(c) Channel catfish: daily and possession limit, four (4).
(d) A person shall not fish:
1. Except during daylight hours; or
2. On Starfish Lake between January 1 and May 31.
(23) Dale Hollow Lake.
(a) Smallmouth bass: slot limit - a person shall release fish between sixteen (16) and twenty-one (21) inches. The daily limits shall not include more than one (1) fish less than sixteen (16) inches long and one (1) fish greater than twenty-one (21) inches long.
(b) Walleye and its hybrids: daily limit, five (5); size limit, sixteen (16) inches.
(c) Sauger: daily limit, ten (10); size limit, fourteen (14) inches.
(d) Rainbow trout and lake trout:
1. Daily limit, April 1 - October 31: seven (7), no more than two (2) of which may be lake trout. No size limit.
2. Daily limit, November 1 - March 31: twenty-two (22) inches.
(e) Largemouth bass: size limit, fifteen (15) inches;
(f) Black bass: aggregate daily limit, five (5), no more than two (2) of which shall be smallmouth bass.
(g) Crappie: size limit, ten (10) inches; daily limit, fifteen (15).
(25) Dix River for two (2) miles downstream from Herrington Lake Dam.
(a) A person shall not fish except with an artificial bait.
(b) Brown trout: size limit, fifteen (15) inches.
(26) Dog Fork, Wolfe County. A person shall:
1. Not fish except with an artificial bait with a single hook; and
2. Release brook trout.
(27) Elkhorn Creek downstream from the confluence of the North and South forks. Largemouth bass and smallmouth bass: slot limit - a person shall release fish between twelve (12) and sixteen (16) inches. The daily limit shall not include more than two (2) fish greater than sixteen (16) inches long.
(28) Elmore Davis Lake.
(a) Largemouth bass: slot limit - a person shall release fish between twelve (12) and fifteen (15) inches.
(b) Channel catfish: size limit, twelve (12) inches.
(c) A person shall not possess shad or use shad for bait.
(30) Game Farm Lakes:
(a) A person shall not possess shad or use shad for bait.
(b) Upper Game Farm Lake.
1. Largemouth bass and smallmouth bass: size limit, fifteen (15) inches; daily limit, three (3); possession limit, six (6); and
2. Channel catfish: daily limit, four (4), possession limit, eight (8).
(c) Lower Game Farm Lake:
1. A person shall not possess shad or use shad for bait.
2. Largemouth bass and smallmouth bass: size limit, fifteen (15) inches; daily limit, three (3); possession limit, six (6); and
3. Channel catfish: daily limit, four (4), possession limit, eight (8).
(33) [64] Greenbo Lake.
(a) A person shall not possess shad or use shad for bait.
(b) Bluegill and sunfish: daily and possession limit, fifteen (15) fish.
(36) [56] Jerffco Lake. Largemouth bass: size limit, fifteen (15) inches.
(37) [56] Kentucky Lake and the canal connecting Kentucky and Bartley lakes.
(a) Largemouth bass and smallmouth bass: size limit, fifteen (15) inches.
(b) Crappie: size limit, ten (10) inches.
(c) Sauger: size limit, fourteen (14) inches.
(38) [59] Kincaid Lake: channel catfish: size limit, twelve (12) inches.
(39) [49] Laurel River Lake.
(a) Largemouth bass: size limit, fifteen (15) inches.
(b) Smallmouth bass: size limit shall be eighteen (18) inches.
(c) Crappie: size limit, nine (9) inches; possession limit, thirty (30) fish.
(40) [41] Lebanon City Lake (Fagan Branch). Largemouth bass and smallmouth bass: slot limit - a person shall release fish between twelve (12) and fifteen (15) inches.
(41) [42] Leary Lake.
(a) A person shall not fish except during daylight hours.
(b) Largemouth bass: daily limit, three (3); possession limit, six (6).
(c) Bluegill: daily limit, fifteen (15), possession limit, thirty (30).
(d) Channel catfish: daily limit, four (4); possession limit, eight (8).
(43) [443] Lincoln Homestead Lake.  
(a) A person shall not fish except during daylight hours.  
(b) Largemouth bass: daily limit, three (3); size limit, fifteen (15) inches.  
(c) Channel catfish: daily limit, four (4); possession limit, eight (8).  
(d) A person shall not possess shad or use shad for bait.  
(44) [444] Lake Malone.  
(a) Largemouth bass: slot limit - a person shall release fish between twelve (12) and fifteen (15) inches.  
(b) Channel catfish: size limit, twelve (12) inches.  
(45) [446] Marlton County Lake.  
(a) Largemouth bass: size limit, fifteen (15) inches.  
(b) A person shall not possess shad or use shad for bait.  
(46) [448] Maury Lake. Largemouth bass; no size limit.  
(47) [447] McNeely Lake. A person shall not possess shad or use shad for bait.  
(48) [486] Mill Creek Lake, in Powell County.  
(a) Largemouth bass, size limit, fifteen (15) inches; daily limit, three (3); possession limit, six (6) fish.  
(b) A person shall not possess shad or use shad for bait.  
(49) [488] Nolin River Lake, whose impoundment extends up Bacon Creek to Highway 178 and to Wheelers Mill Road Bridge on the Nolin River.  
(a) Largemouth bass and smallmouth bass: size limit, fifteen (15) inches except that the daily limit may contain one (1) and the possession limit two (2) bass under fifteen (15) inches.  
(b) Crappie: size limit, nine (9) inches.  
(50) [603] Ohio River.  
(a) Walleye, sauger and their hybrids: no size limit; daily limit, ten (10) fish, singly or in combination.  
(b) White bass, yellow bass, striped bass and their hybrids: daily limit, thirty (30); no more than four (4) in a daily limit shall be fifteen (15) inches long or longer.  
(51) [632] Painsville Lake.  
(a) Largemouth bass: slot limit, twelve (12) to fifteen (15) inches.  
(b) Smallmouth bass: size limit, eighteen (18) inches.  
(52) [643] Pancho Creek, Wolfe County. A person shall:  
(a) Not fish except with an artificial bait with a single hook;  
(b) Release brook trout.  
(53) [644] Peabody Wildlife Management Area, for Goose Lake, Island Lake or South Lake.  
(a) Largemouth bass: Size limit, fifteen (15) inches; daily limit, three (3); possession limit, six (6).  
(b) Bluegill, daily and possession limit, fifteen (15).  
(c) Redbreast sunfish: daily and possession limit, fifteen (15).  
(d) Channel catfish: daily limit, four (4); possession limit, eight (8).  
(54) Walleye: size limit, fifteen (15) inches; daily and possession limit, one (1).  
(f) A person shall not:  
1. Fish:  
   a. Except during daylight hours; and  
   b. From October 15 through March 15; or  
   2. Take frogs.  
(55) [650] Poinsett Lake: largemouth bass, size limit, twelve (12) to fifteen (15) inch protective slot limit.  
(56) [652] Pikieville City Lake: Catch and release largemouth bass fishing (no harvest).  
(57) Poor Fork and its tributaries in Letcher County downstream to the first crossing of Highway 932. A person shall:  
(a) Not fish except with an artificial bait with a single hook; and  
(b) Release brook trout.  
(58) [660] Lake Rhea.  
(a) Largemouth bass and smallmouth bass: size limit, fifteen (15) inches; daily limit for largemouth bass, three (3).  
(b) A person shall not possess shad or use shad for bait.  
(59) [690] Rough River Lake.  
(a) Crappie: size limit, nine (9) inches.  
(b) Largemouth bass and smallmouth bass: size limit, fifteen (15) inches, except that the daily limit may contain one (1) and the possession limit two (2) bass under fifteen (15) inches.  
(60) [693] Shanty Hollow Lake.  
(a) Largemouth bass: size limit, fifteen (15) inches.  
(b) Channel catfish: size limit, twelve (12) inches.  
(c) A person shall not possess shad or use shad for bait.  
(61) Shifflet Creek, Bell County, outside the Cumberland Gap National Park. A person shall:  
(a) Not fish except with an artificial bait with a single hook; and  
(b) Release brook trout.  
(62) Sportsman's Lake.  
(a) A person shall not possess shad or use shad for bait.  
(b) Upper Sportsman's Lake:  
1. Largemouth bass and smallmouth bass: size limit, fifteen (15) inches; daily limit, three (3); possession limit, six (6); and  
2. Channel catfish: daily limit, four (4); possession limit, eight (8).  
(63) Lower Sportsman's Lake:  
1. A person thirteen (13) years or older shall not fish; and  
2. Daily limit, three (3) fish of any species.  
(64) Spurlington Lake. A person shall not possess shad or use shad for bait.  
(65) Sympson Lake: Largemouth bass: size limit, fifteen (15) inches.  
(66) Taylorsville Lake, including the impounded waters of the lake to Dry Dock Road Bridge on the Salt River.  
(e) Largemouth bass and smallmouth bass: size limit, fifteen (15) inches.  
(b) Crappie: daily limit, fifteen (15); possession limit, thirty (30);  
(c) size limits, nine (9) inches.  
(67) Taylorville Lake WMA (as designated).  
(a) Largemouth bass: size limit, fifteen (15) inches; daily limit one (1).  
(b) Channel catfish: daily limit, four (4) fish.  
(68) Tennessee River downstream from Kentucky Lake Dam.  
(c) Daily limit, one (1).  
(69) Wood Creek Lake.  
(a) Crappie: size limit, nine (9) inches.  
(b) Largemouth and smallmouth bass: size limit, fifteen (15) inches.  
(70) Yates Lake: Largemouth bass and smallmouth bass; size limit, fifteen (15) inches.  
Section 5. Seasonal Catch and Release for Trout. (1) There shall be seasonal catch and release for trout season from October 1 to March 31.  
(2) A person shall use artificial bait and release trout.  
(3) The following streams shall be open to the seasonal catch and release for trout season:  
(a) Bark Camp Creek in Whitley County;  
(b) Beaver Creek from Highway 90 Bridge upstream to Highway 200 Bridge in Wayne County;  
(c) Big Bone Creek within Big Bone Lick State Park in Boone County;  
(d) Cane Creek in Laurel County;  
(e) Casey Creek in Trigg County;  
(f) Clear Creek from mouth upstream to 190 Bridge in Bell County;  
(g) East Fork Clarks River from Bee Creek upstream to Old Salem Road Bridge in Calloway County;  
(h) East Fork of Indian Creek in Manorville County;  
(i) Elk Spring Creek in Wayne County;  
(j) Left Fork of Beaver Creek in Floyd County from Highway 122 Bridge upstream to the headwater;  
(k) Lick Creek in Simpson County;  
(l) Middle Fork Red River in Natural Bridge State Park in Powell County;  
(m) Otter Creek in Meade County on the Fort Knox Reservation and Otter Creek Park; and  
(n) Rock Creek from the Bell Farm Bridge to the Tennessee state line in McCreary County.  
(4) The seasonal catch and release for trout season for Swift Camp Creek in Wolf County shall be October 1 through May 31.
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Section 6. Special Limits for Fishing Events. (1) The commissioner may establish special limits for fishing events including:
(a) Size limits for selected species;
(b) Creel limits for selected species;
(c) Eligible participants; and
(d) Dates and times of special limits.
(2) Event sponsors shall post signs informing anglers of the special limits a minimum of twenty-four (24) hours before the event.

MARK S. CRAMER, Deputy Commissioner
For DR. JONATHAN GASURET, Commissioner
GEORGE WARD, Secretary
APPROVED BY AGENCY: March 3, 2006
FILED WITH LBC: April 14, 2006 at 10 a.m.
CONTACT PERSON: Rose Mack, Kentucky Department of Fish and Wildlife Resources, 1 Sportsman's Lane, Frankfort, Kentucky 40601, phone (502) 564-7109, ext. 441, fax (502) 564-0506.

COMMERCE CABINET
Department of Fish and Wildlife Resources
(As Amended at ARRS, June 13, 2006)

301 KAR 2:132. Elk predation permits, landowner cooper-ator permits, and quota hunts.

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

Section 1. Definitions. (1) "Antlered elk" means an elk with one (1) antler possessing four (4) or more antler points that are each at least one (1) inch long when measured from the main beam. The main beam shall count as one (1) point.
(2) "Antlerless elk" means an elk without visible polished antler protruding above the hairline.
(3) "Electronic decoy" means a motorized decoy powered by electricity, regardless of source.
(4) "Elk" means a member of the species Cervus Elaphus.
(5) [44] "Limited entry area" means a strategically-located and defined management unit, large in size and consisting of public and private holdings, where elk populations are encouraged to grow and expand, serving as the source areas for elk within the restoration zone, managed for reduced hunting pressure, and elk hunting access is limited or restricted to specifically drawn and designated hunters. The limited entry areas are the Begley/Redbird Limited Entry Area or the Starfish Limited Entry Area, each of whose boundaries are described in Section 4(4) of this administrative regulation.
(6) [61] "Restoration area" means the Kentucky counties east of and including Knox, Clay, Perry, Breathitt, Magoffin, Johnson, McCreary, Martin, and Whitley.
(7) [66] "Wild elk" means:
(a) An elk translocated and released by the department; or
(b) The progeny of an elk translocated and released by the department.
(8) [77] "Zone-at-large" means any area within the sixteen (16) county restoration area except the limited entry areas.

Section 2. Elk Damage Control. (1) A person shall not kill or attempt to take or molest a wild elk that is causing property damage, except as specified in this administrative regulation.

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

(1) A person may apply for the [6a] quota elk hunt [permit] December 1 - July 31.
(2) A person may apply for the [elk quota hunt] [by purchasing an elk-hunt-drawing-permit] by visiting the department's Web site at www.ky.gov, calling [basepre@1] - 877-598-2401 or visiting a KDSS agent and providing the following:
(a) The applicant's Social Security number or driver's license number;
(b) A ten (10) dollar nonrefundable application fee.
(3) Elk-hunt-drawing-permits may be purchased after July 31 to allow nonresident or out-of-county hunters to take-out-of-county elk in compliance with the permit requirements set forth in Section 7 of this administrative regulation. Purchase made after July 31 shall not be eligible for or entered into the hunt drawing.
(4) An applicant may apply once. Duplicate applications shall result in disqualification.
(5) [6b] The commissioner may:
(a) Extend the application deadline if technical difficulties with the application system prevent applications from being accepted for one (1) or more days during the application period; and
(b) Authorize the on-site sale of applications during promotional events or festivals.
(5) [6d] There shall be no preference points.
(6) [6e] There shall be a random electronic drawing.
(7) [6f] The drawing and complete results shall be posted on the department's Web site by August 20 of the application year.
(8) [9d] If any individual who was drawn is disqualified for any of the reasons specified in this administrative regulation, an alternate shall be redrawn from the undrawn applicants.
(9) [44h] A total of 200 regular drawing [406] tags shall be awarded consisting of sixty (60) fifty-two (52) antlered and 140 fifty-two (52) antlerless, [of which twenty-five (25) shall be Special Commission Permits.] Additional either-sex landowner cooperator permits shall [will] be issued with approval of the commission.
(10) Two (2) tags, one (1) antlered [bull] and one (1) antlerless, shall be available for a special youth-only hunt to be held during the regular seasons, beginning in 2007.
(a) Persons fifteen (15) years old or younger, at the time of application, shall be eligible to enter the special youth draw. Those not drawn for the special youth tags shall automatically be entered into the regular draw.
(b) The application period for the special youth draw shall be the same as that for the regular elk hunt.
(c) The fee for entry in the special youth draw shall be ten (10) dollars.
(11) The special youth hunt shall be valid for the zone at large during seasons as set forth in Section 5 of this administrative regulation.
(12) Special youth tags shall not be valid for use in limited entry areas except on land owned by the youth's parent or guardian, as described in Section 4 of this administrative regulation.
(13) A resident elk tag shall cost thirty (30) [twenty-five (25)] dollars.
(14) A nonresident elk tag shall cost $365 [800].
(15) A maximum of ten (10) percent of all regular tags shall be randomly awarded to nonresidents.

Section 4. Drawn Applicants and Limited Entry Areas. (1) A
person whose name is selected pursuant to this administrative regulation or a person who receives or is transferred a landowner cooperator permit or a special commission permit issued pursuant to 301 KAR 3.100 shall participate in the elk quota hunt as assigned.

(2) An individual selected to participate in a quota hunt or who receives or is transferred a landowner cooperator permit or a special commission permit may be accompanied by up to two (2) other individuals who may assist in the retrieval of the harvested elk.

(3) Drawn applicants shall be assigned:
(a) The sex of the elk they are permitted to take; and
(b) The area they are permitted to hunt, either a limited entry area or zone-at-large, except that a hunter who owns land in a limited entry area may draw for an at-large elk tag may hunt on his or her [he/she] land during at-large seasons as defined in Section 5 of this administrative regulation.

(4) The limited entry areas shall be designated as follows:
(a) Begley/Redbird Limited Entry Area: starting at the intersection of Kentucky Route 2058 and Route 421 near Hatton; boundary proceeds south along Route 421 to the intersection of Route 421 and Route 221. (The boundary then proceeds west along Route 221 to the intersection of Route 221 and Route 466. The boundary then goes north following Route 466 to the intersection of Route 66 and Route 1850, then east along Route 1850 to the intersection of Route 1850 and Route 1780 at Warbranch. The boundary then proceeds south on Route 1780 to intersection of Route 221 and into the county of Jackson, then west along Route 221 to intersection of Route 221 and Route 466 at Hatton [Thousandlake exit on the Hal Rogers Parkway]; the boundary proceeds east along Kentucky Route 418 to the junction of U.S. Route 221 at Hyden, Kentucky. The boundary then proceeds south along Highway 421 to the intersection of Highway 421 and Kentucky Route 66. The boundary then goes north following Route 66 to the intersection of Route 66 and Highway 421/Route 80. The boundary then proceeds east along the Hal Rogers Park to Thousandlake exit completing the boundary).

(b) Starfire Limited Entry Area: begins at the intersection of Route 1098 and Route 80 at Softshell, Kentucky. The boundary proceeds west along Route 1098 to the junction of Route 1098 and Route 15. The boundary then proceeds south along Route 15 to the junction of Route 15 and Route 476 near Lost Creek, Kentucky. The boundary then turns east along Route 476 to the intersection of Route 476 and Route 80, then east on Route 80 to [and Route 80 at the town of Hazard, Kentucky. The boundary proceeds east along Route 80 and Interstate] Route 1098 at Softshell, Kentucky completing the boundary.

(5) A maximum of six (6) tags for antlered elk shall be assigned to each limited entry area.

Section 5. Seasons for Annual Quota Elk Hunts. (1) There shall be three (3) [five (5)-two (2)-one (1)-week] annual elk quota hunts.

(a) There shall be a quota hunt beginning the first Saturday in October, for seven (7) consecutive days for antlered elk on the Starfire and Begley/Redbird Limited Entry Areas and in the zone-at-large.

(b) There shall be a quota hunt beginning the second [first] Saturday in December, for seven (7) consecutive days for antlerless elk on the Starfire and Begley/Redbird Limited Entry Areas [and in the zone-at-large].

(c) There shall be a quota hunt beginning the second Saturday in December, for fourteen (14) consecutive days for antlerless elk in the restoration zone at-large.

(d) An either-sex archery season for zone-at-large permit holders shall be held from the first Saturday in October through the third Monday in January.

(2) Legal weapons. All hunters may use any legal weapon for deer hunting except as provided by subsection (4) of this section. A handgund used to hunt elk must have a barrel length of at least six (6) inches, have a bore diameter of 0.270 inches (.270 caliber) or greater, and when fired, the bullet must produce at least 550 feet per second at 100 yards.

(3) Limits. A quota elk hunter shall only take one (1) elk of the sex determined by the tag drawn.

(b) An individual who receives or is transferred an either-sex landowner cooperator permit or a special commission permit may hunt in either the antlered or antlerless elk seasons, providing the tag has not been filled but is held to the season bag limit.

(4) Illegal hunting equipment. A person shall not use or possess while elk hunting:
(a) A device capable of taking an elk except a firearm, crossbow or archery equipment;
(b) A modern firearm of less than .27 caliber;
(c) A muzzle-loading firearm of less than .50 caliber;
(d) A shotgun of less than 20 gauge;
(e) A [handgun];
(f) Rimfire ammunition;
(g) A fully-automatic firearm;
(h) A firearm with a magazine capacity greater than ten (10) rounds;
(i) A steel-jacketed ammunition;
(j) A tracer bullet ammunition;
(k) A shotgun shell containing more than one (1) projectile;
(l) A broadhead smaller than seven-eighths (7/8) inch wide;
(m) A barbed broadhead;
(n) A crossbow without a working safety device;
(o) A chemically-treated arrow; or
(p) An arrow with a chemical attachment;
(q) Hunter orange;
(r) During the firearm elk season, all hunters hunting within the sixteen (16) county elk restoration zone shall display solid, unbroken hunter orange visible from all sides on the head, back and chest pursuant to 301 KAR 2:172, Section 4, and 301 KAR 2:178, Section 3(7).

(5) The hunter orange portions of a garment worn to fulfill the requirements of this section:
(a) May display a small section of another color; and
(b) Shall not have mesh weave openings exceeding one-fourth (1/4) inch.

(c) A camouflage pattern hunter orange garment worn with additional solid hunter orange on the head, back and chest shall not meet the requirements of this section.

(6) Hunter requirements.
(a) A person under sixteen (16) years old shall be accompanied by an adult who shall remain in a position to take immediate control of the juvenile's firearm.

(b) An adult accompanying a juvenile hunter shall not be required to possess a hunting license or elk permit if the adult is not hunting.

(c) An elk hunter or any person accompanying the elk hunter:
1. May be in the field, woods or stands before or after daylight hours, but shall not take elk except during daylight hours;
2. Shall not use dogs;
3. Shall not use bait;
4. Shall not drive elk from outside his assigned area;
5. Shall not take swimming elk;
6. Shall not use electronic calls or electronic decoys; and
7. Shall not take an elk while in a vehicle or boat, or on horseback. A hunter may use a vehicle as a hunting platform if he has a disabled hunting exemption permit issued by the department.

(7) Tagging and check-in requirements.
(a) Immediately after taking an elk, a hunter shall attach the tag portion of the permit to the carcass before moving the carcass.

(b) Prior to hunting, the limited entry area hunters shall check in at the following locations:
1. Starfire Limited Entry Area, Robinson Forest.
2. Begley Limited Entry Area, Blanton Forest Boy Scout.

(c) A person checking in for a limited entry area quota hunt shall show his Social Security number, and valid hunting license, except a person on military furlough for more than three (3) days may show his military identification instead of a license.

(d) Before removing the carcass from the field [After harvest], limited entry area hunters shall telecheck their elk by calling 1-800-245-4283 and record the confirmation number on a hunter's log. Limited entry area hunters are also required to check out at the
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locations listed in subparagraphs 1 and 2 of this paragraph.
(e) Before removing the carcass from the field [after harvest], zone-at-large hunters shall telecheck their elk by calling 1-800-245-4263 and record the confirmation number on a hunter’s log.

Section 6. Elk Hunting on Public Land. (1) An individual who has been drawn to hunt in the elk hunt, or who either receives or is transferred a special commission permit, may hunt on all Wildlife Management Areas, state forests, Big South Fork National River and Recreation Area, the Daniel Boone National Forest, and the Jefferson Nation Forest within the sixteen (16) county elk zone under the conditions of the type of tag they receive.
(2) Public land that lies within a Limited Entry Area shall be managed pursuant to Sections 4 and 5 of this administrative regulation.
(3) Public land that lies within the zone-at-large shall be managed pursuant to Sections 4 and 5 of this administrative regulation.
(4) Portions of Paintsville Lake WMA lie outside the sixteen (16) county elk restoration zone and are subject to the requirements established in Section 8 of this administrative regulation.
(5) Elk hunting is not allowed on public areas during quota deer hunts.

Section 7. Landowner Cooperator Permits. (1) With the approval of the commission, the commissioner may issue [one -(+)] either-sex elk permit(s) each [permit-per] year of the agreement to qualified landowner or lessees who enter into a five (5) year public hunting and access agreement with the department.
(2) To qualify, landowners or lessees shall own or lease 5,000 acres of [semi-grown] elk habitat to which he or she, and the lessee, if applicable, agrees to allow public hunting and access.

(a) A landowner cooperator permit is transferable, but shall be used on the land for which the memorandum of agreement was made.
(b) The permit may be transferred to any person eligible to hunt in Kentucky.
(c) The landowner or agent identified in the memorandum of agreement for that property shall provide the department the following information for each person to whom a permit will be transferred:
   1. Name;
   2. Address; and
   3. Telephone number.
(d) If the permit is sold, the landowner or agent shall provide the department:
   1. The gross sale price for the permit; and
   2. How the proceeds of the sale will be used in Kentucky for wildlife management.
(e) The permit shall be issued by the department directly to the recipient specified by the landowner or agent [landowner cooperator permits are transferable, but shall be used on the landowner cooperator’s land for which the agreement was made].
(f) One (1) landowner cooperator permit shall be issued for each 5,000 acres of [semi-grown] land included in the agreement.
(g) Public access agreements with the department shall be memorialized in memorandums of understanding.
(h) Recipients of landowner cooperator permits shall comply with the provisions of this administrative regulation [regarding] including seasons, legal methods of taking [take] and other elk hunting requirements.
(i) Landowner cooperator land that resides within a limited entry area shall be managed pursuant to Sections 4 and 5 of this administrative regulation.
(j) Landowner cooperator land that resides within the zone-at-large shall be managed pursuant to Sections 4 and 5 of this administrative regulation.

Section 8. Hunting Elk Outside of the Sixteen (16) County Restoration Zone. (1)(a) A person may hunt elk in counties other than the sixteen (16) county restoration zone.
(b) The restoration zone counties are:
   1. Bell,
   2. Brauthit;
   3. Clay;
   4. Floyd;
   5. Harlan;
   6. Johnson;
   7. Knott;
   8. Knoc;
   9. Leslie;
   10. Letcher;
   11. Magoffin;
   12. Martin;
   13. McCreary;
   14. Perry;
   15. Pike; and
(2) The methods of taking and seasons established in 301 KAR 2:172 and 301 KAR 2:174 shall apply to taking elk outside of the sixteen (16) county restoration zone.
(a) In order to harvest an out-of-zone elk during the 2006-2007 season, a hunter must be a legal deer hunter and have purchased a ten (10) dollar 2006 elk-drawing permit. Elk hunt drawing permits may be purchased after July 31 to allow potential out-of-zone elk hunters to take out-of-zone elk in compliance with the permit requirements set forth in Section 8 of this administrative regulation. Purchases made after July 31 shall not be eligible for or entered into the hunt drawing. Beginning March 1, 2007, out-of-zone permits shall be available for the 2007 season and shall be twenty (20) dollars for residents and $365 for nonresidents.
(b) Landowners are exempt from this permit requirement as per KRS 150.170.
(c) Either sex elk may be taken and shall not count towards the deer bag limit.
(d) There shall be a bag limit of one (1) out-of-zone elk per hunter.
(e) Elk harvested outside of the restoration zone shall be telechecked prior to removal of the carcass by calling 1-800-245-4263 and recording the confirmation number on a hunter’s log (immediately after taking an elk, the hunter shall:
   (a) Notify the department by calling 1-800-26-ALERT to have the elk inspected; and
   (b) Not move the elk from the site until the department has completed the inspection.
(f) A hunter may field dress an elk on-site prior to inspection by the department, if the ears and entrails are retained at the site until inspection is complete.
(g) An elk harvested in a county other than the sixteen (16) county restoration area does not have to be telechecked.
(h) [301 KAR 2:174] A person shall report the pickup of any elk antler that has the skull or skull plate attached to it, not including sheds. A person shall call the Department Law Enforcement at 1-800-ALERT within twenty-four (24) hours.

MARK S. CRAMER, Deputy Commissioner
For DR. JONATHAN GAHETT, Commissioner

GEORGE WARD, Secretary
APPROVED BY AGENCY: March 3, 2006
FILED WITH LRC: April 14, 2006 at 10 a.m.
CONTACT PERSON: Rose Mack, Kentucky Department of Fish and Wildlife Resources, 1 Sportsman’s Lane, Frankfort, Kentucky 40601, phone (502) 564-7109, ext. 441, fax (502) 564-0506.

COMMERCE CABINET
Department of Fish and Wildlife Resources
(As Amended at AFRS, June 13, 2006)

301 KAR 2:176. Deer control tags.

RELATES TO: KRS 150.010, 150.105, 150.170, 150.175, 150.340, 150.360, 150.390, 150.395, 150.990
STATUTORY AUTHORITY: KRS 150.025, 150.105
NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.105 allows the commissioner to authorize the destruction of wildlife that is causing damage. KRS 150.025 authorizes the department to
promulgate administrative regulations regulating the taking of wildlife. This administrative regulation establishes the procedures under which deer may be taken to alleviate localized agricultural and wildlife habitat damage until it is appropriate to apply deer herd stabilization or reduction measures on a county-wide basis through regular hunting seasons.

Section 1. Definitions. (1) "Damage to wildlife habitat" means: (a) The existence of a browse line caused by deer, or (b) Damage to more than thirty-five (35) percent of native plant species preferred by deer. (2) "Deer control tag" means a tag issued by the department which authorizes a hunter to take antlerless deer during an open deer season. (3) "Deer destruction permit" means written authorization from the department, pursuant to KRS 150.105, to take deer outside the regular hunting season framework. (4) "Deer food plot" means a crop grown to attract and feed deer. (5) "Department representative" means a department employee who is qualified and authorized by the commissioner to assess deer damage. (6) "Landowner" means the person who has title to a particular property.

Section 2. Qualifying for Deer Control Tags. (1) A landowner with fewer than 1,000 contiguous acres shall qualify for deer control tags if: (a) He has permitted deer hunting on the property during the previous deer season; (b) Standard deterrent measures recommended by a department representative have proven ineffective or are impractical; and (c) A department representative certifies deer damage to crops, gardens, property or wildlife habitat. (2) A landowner with 1,000 contiguous acres or more shall qualify for deer control tags without evidence of damage if: (a) He has permitted deer hunting on the property during the previous deer season; (b) According to the judgement of the department representative, regular deer seasons are inadequate to control deer populations on the property; and (c) The landowner agrees to: 1. Follow the deer management practices recommended by the department representative; and 2. Supply the department with weight, age and condition data on deer taken from his property. (3) A department representative shall make an on-site inspection of each property for which a request for deer control tags has been made, unless the property: (a) Has been previously inspected by the department and the landowner affirms that deer damage still exists; or (b) Is immediately adjacent to property assessed by a department representative as having severe deer damage. (4) A landowner whose property is immediately adjacent to property assessed by a department representative as having severe deer damage shall be issued damage control tags upon request of the landowner, even if there is no evidence of damage on the property. (5) The department shall not issue deer control tags to a landowner whose only damage is to a deer food plot.

Section 3. Applying for Deer Control Tags. (1) A landowner wishing to apply for deer control tags shall contact the department through: (a) A conservation officer; (b) The appropriate district wildlife biologist; or (c) The Division of Wildlife in Frankfort. (2) If required by Section 2 of this administrative regulation, a department representative shall visit the property and assess the nature and extent of deer damage. (3) A request for an assessment shall be made on or before September 30 to be eligible for current year damage control tags. (4) A request for an assessment made after September 30 shall be considered for the following year.

Section 4. Number of Tags Issued. (1) The department shall determine the number of deer control tags to be issued for each landholding based on the recommendation of the department representative. (2) Except as provided in Section 2(2) or (4) of this administrative regulation, the department shall not issue a deer control tag if: (a) The county deer season is adequate to achieve the desired reduction in deer numbers; or (b) Crop or environmental damage is not present.

Section 5. Transfer of Deer Control Tags. (1) Deer control tags shall be issued in the landowner's name. (2) A landowner: (a) May transfer a deer control tag to another person; (b) Shall not issue more than five (5) deer control tags to an individual; (c) Shall require hunters to sign a deer control tag at the time of transfer; and (d) Shall return unissued tags to the department before January 25.

Section 6. Use of Deer Control Tags. (1) A deer control tag shall not be valid except on the landholding for which it was issued. (2) A deer control tag shall expire after the license year for which it was issued. (3) A person using a deer control tag: (a) Shall have in his possession: 1. A deer control tag with his signature; and 2. A valid hunting license and the receipt portion of a current deer permit, unless exempt from license or permit requirements by KRS 150.170; (b) May use deer control tags during archery, crossbow, and gun or muzzle-loader seasons to take antlerless deer; (c) Shall not take more than five (5) deer per license year with deer control tags; and (d) Shall abide by the provisions of 301 KAR 2:172, except that he shall: 1. Not take antlered deer; 2. Tag deer with the deer control tag rather than the carcass tag portion of the deer permit; (4) Deer taken with a deer control tag shall not count toward the annual limit as specified in 301 KAR 2:172.

Section 7. Deer Destruction Permits. (1) The department may issue a deer destruction permit. (a) To a landowner; 1. Who continues to experience damage after being issued deer control tags; or 2. Whose property cannot legally be hunted, and (b) Where deer are posing a public safety or environmental threat. (2) A deer destruction permit shall specify: (a) The number and sex of deer to be destroyed; (b) The method of destruction; (c) The name of the person who will destroy the deer; and (d) The dates during which the destruction will take place. (3) A deer destruction permit shall not be issued without the recommendation of a representative of the department and the approval of the commissioner. (4) A person destroying deer shall: (a) Attach a disposal tag provided by the department to each carcass; (b) Not remove the disposal tag until the carcass is processed or disposed of, and (c) If an antlered deer was taken, turn the antlers in to the department. (5) A deer destruction permit shall not be used except as specified on the permit. (6) Nothing in this administrative regulation shall prohibit a landowner or tenant from taking action to control deer that are posing a direct and immediate threat to life or property.

Section 8. Denial or Revocation of Deer Control Tags or Destruction Permits and Appeal Procedures. (1) The department may
revoking a deer control tag or destruction permit and deny a future tag or permit to a person who.
(a) Fails to comply with the requirements of this administrative regulation;
(b) Is convicted of a deer administrative regulation violation; or
(c) Otherwise abuses the Deer Control Tag Program.
(3) An appeal of a revocation or a denial of eligibility shall be submitted:
(a) In writing to the commissioner; and
(b) Within sixty (60) days of the date of the revocation or denial.
(3) An appeal of the commissioner’s decision shall be made in writing to the Fish and Wildlife Resources Commission within sixty (60) days of the commissioner’s decision.
(4) The Fish and Wildlife Resources Commission shall hear the appeal at its next regularly scheduled meeting.

MARK S. CRAMER, Deputy Commissioner
For DR. JONATHAN GASSETT, Commissioner

GEORGE WARD, Secretary
APPROVED BY AGENCY: March 3, 2006
FILED WITH LRC: April 14, 2006 at 10 a.m.
CONTACT PERSON: Rose Mack, Kentucky Department of Fish and Wildlife Resources, 1 Sportsman’s Lane, Frankfort, Kentucky 40601, phone (502) 564-7109, ext. 441, fax (502) 564-6506.

COMMERCE CABINET
Department of Fish and Wildlife Resources
(As Amended at ARRS, June 13, 2006)

RELATES TO: KRS 150.010, 150.170, 150.175, 150.180, 150.340, 150.360, 150.370, 150.390, 150.395, 150.990
STATUTORY AUTHORITY: 150.025(1), 150.620
NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) and 150.620 authorize the department to establish hunting seasons, limits, methods of taking and other matters necessary to carry out the purpose of KRS Chapter 150 on Wildlife Management Areas. This administrative regulation establishes deer hunting seasons, application procedures and other matters pertaining to deer hunting on Wildlife Management Areas that differ from statewide requirements.

Section 1. Definitions. (1) "Bonus quota hunt deer permit" means a permit that authorizes a hunter participating in a Wildlife Management Area or state park quota hunt and who possesses a statewide deer permit to take additional deer during a quota hunt.
(2) "Mentor hunt" means a quota youth hunt in which the adult accompanying the youth is eligible to take a deer.
(3) "Modern firearm season" means the ten (10) or sixteen (16) consecutive day period beginning the second Saturday in November when breech-loading firearms may be used to take deer.
(4) "Private Inholding" means privately-owned property completely surrounded by a Wildlife Management Area.
(5) "Quota hunt" means a Wildlife Management Area deer hunt, including a quota youth hunt, where a participant is selected by a random drawing.
(6) "Quota youth hunt" means an adult-accompanied hunt in which only persons under age sixteen (16) are eligible to apply and to take deer.
(7) "Statewide deer requirements" mean the season dates, zone descriptions and other requirements for deer hunting established in 301 KAR 2.172 and 301 KAR 2.174.
(8) "Wildlife management area or WMA" means a tract of land the department controls or manages through ownership, lease, license or cooperative agreement.
(9) "Youth" means a person under the age of sixteen (16) by the date of the hunt.

Section 2. General WMA Requirements. (1) Unless specified otherwise in this administrative regulation, statewide deer requirements shall apply to a WMA.
(2) Unless specified otherwise in Section 6 of this administrative regulation, a WMA in two (2) or more deer hunting zones as specified in 301 KAR 2.174 shall be governed by the most liberal zone requirements of the zones in which it lies.
(3) Deer hunting on WMAs listed in Section 6 of this administrative regulation, shall be permitted only as stated, except archery hunting is allowed under the statewide archery regulations established in 301 KAR 2.172, Section 5(1), unless otherwise noted.
(4) An open firearm deer hunt:
(a) Shall be the third Wednesday in January for ten (10) consecutive days;
(b) Shall be limited to United States Armed Forces and National Guard veterans who are residents of Kentucky, or nonresidents stationed in Kentucky, and who were deployed out-of-country during any portion of the most recent regular statewide deer season; and
(c) Participants shall follow statewide deer requirements and hunt only on WMAs designated as open for this special hunt.
(5) [Repealed] On a WMA and Meade-Westwaco Public Hunting Area, a person.
(a) Shall not use a nail, spike, screw-in device, wire or tree climber for attaching a tree stand or climbing a tree;
(b) May use a portable stand or climbing device that does not injure a tree;
(c) Shall not place a portable stand in a tree more than two (2) weeks before opening day, and shall remove it within one (1) week following the last day of, each hunting period;
(d) Shall plainly mark the portable stand with his name and address; and
(e) Shall not use an existing permanent tree stand.
(6) [Repealed] The owner of a private inholding or his guest;
(a) May hunt on the owner’s lands without application; and
(b) Shall follow all other requirements for the WMA which surrounds the inholding.
(7) [Repealed] A person shall not hunt on a private inholding when deer hunting is not allowed on the surrounding WMA.
(8) [Repealed] A person without a valid quota hunt confirmation number shall not enter a WMA during a quota hunt on that area except:
(a) To travel through a WMA on an established road or to use an area designated open by a sign;
(b) To accompany a youth hunting in a youth quota or mentor hunt;
(c) To accompany a movement-impaired hunter who [that] was drawn to hunt. Only one (1) assistant shall be allowed and the assistant shall not be required to have applied for the quota hunt.
(9) [Repealed] Exception if waterfowl hunting or hunting at night, a person hunting any species or a person accompanying a hunter shall wear hunting orange clothing as specified in 301 KAR 2.172 while on a WMA when firearms are permitted for deer hunting or while hunting within the sixteen (16) county elk zone when firearm elk season is in progress.
(10) [Repealed] A person shall not place, distribute or hunt over bait as prohibited in 301 KAR 3:010.

Section 3. General Quota Hunt Procedures. (1) A person who is not selected and applies to hunt the following year shall be given one (1) preference point for each year he was not selected.
(2) A random selection of those with preference points shall be made for each year’s quota hunts before those without preference points are chosen.
(3) Each applicant’s preference points are independent of each other. If applying as a party, the entire party is selected if one (1) member of the party is selected.
(4) Youth hunters may apply for one (1) youth quota hunt and one (1) general quota hunt.
(5) The commissioner may extend the application deadline if technical difficulties with the automated application system prevent applications from being accepted for one (1) or more days during the application period.
(6) Unless specified otherwise in Section 6 of this administrative regulation, a WMA in two (2) or more deer hunting zones as specified in 301 KAR 2.174 shall be governed by the most liberal
zone requirements of the zones in which it lies.

(2) Unless otherwise specified in Section 6 of this administrative regulation, a hunter may take up to two (2) deer on a quota hunt, only one (1) of which may be an antlered deer.

(7) (6) Bonus quota deer hunt permits shall only be used for quota hunts. Deer taken with these permits do not count toward the statewide total deer limit.

(3) (9) There shall be one (1) person drawn from the eligible applicants to the quota hunts who were not selected in the original drawing. This person shall receive one (1) deer permit which carries with it all the privileges of the Special Commission Permit described in 301 KAR 3:100.

Section 4. Quota Hunt Application Process. A person applying for a quota hunt shall:

(1) Call the toll free number listed in the current fall hunting and trapping guide from a touch-tone phone between September 1 and September 30;

(2) Enter his Social Security number;

(3) Indicate a first and second choice of hunts; and

(4) Pay a three (3) dollar application fee for each applicant, prior to the draw by:

(a) Check;

(b) Money order;

(c) Visa; or

(d) Master Card;

(5) Not apply more than one (1) time;

(6) Not apply as a group of more than five (5) persons; and

(7) Not be eligible to participate in a quota hunt unless selected pursuant to this administrative regulation, or accompanying a youth hunting in a youth quota or mentor hunt.

Section 5. Quota Hunt Participant Requirements. Except as otherwise specified in this administrative regulation, a person selected to participate in a quota hunt, including adult guardians accompanying youth hunters on quota youth and mentor hunts, shall:

(1) Check-in and show his Social Security number;

(2) Possess an annual Kentucky hunting license, except:

(a) A person on military furlough for more than three (3) days who shall show his military identification and status instead of a license; or

(b) If not deer hunting;

(3) Show proof of purchasing a current statewide deer permit;

(4) Possess a deer permit that authorizes the taking of deer with the equipment being used and in accordance with the zone restrictions where the hunt will occur;

(5) Possess an unused bonus deer permit, if he has already taken the two deer authorized by possession of the statewide deer permit;

(6) Not be required to possess a deer permit if he possesses and presents a senior/disabled combination hunting and fishing license at time of check-in;

(7) Hunt on assigned date and in assigned areas selected by random drawing of applicants when necessary;

(8) Comply with hunting equipment restrictions specified by the type of hunt;

(9) Check in from noon to 8 p.m. local time on the day before the hunt or between 5:30 a.m. and 8 p.m. Eastern time on the day of the hunt, except as otherwise specified in this administrative regulation;

(10) Except as otherwise specified in this administrative regulation, check deer daily at the designated WMA check station and check out:

(a) When finished hunting;

(b) When the hunter's bag limit is reached; or

(c) By 8 p.m. Eastern time on the final day of the hunt;

(11) Be declared ineligible to apply for the next year's drawing if the hunter fails to check out properly; and

(12) Comply with all quota hunt requirements, including the fifteen (15) inch minimum outside antler spread harvest restriction for antlered deer when in effect, or be ineligible to apply for a quota hunt the following year.

Section 6. WMA Hunting Dates, Requirements and Restric-
tions. (1) Adair WMA. The crossbow season shall be open under statewide deer requirements.

(2) Ballard WMA.

(a) The quota youth hunt shall be for any deer or antlerless deer as determined by a random drawing, and shall be for two (2) consecutive days beginning the fourth Saturday in October.

(b) The quota hunt shall be for any deer or antlerless deer as determined by a random drawing, for two (2) consecutive days beginning on the first Saturday in November.

(c) This area shall be closed to the statewide archery season.

(d) The crossbow modern firearm, youth firearm season and muzzleloader seasons shall be open under statewide deer requirements only on the 400 acre tract south of Salee Crice Road.

(3) Barren River WMA.

(a) On the Peninsula Unit, including Narrows, Goose and Grass Islands, a person:

1. shall not hunt deer with a breech-loading firearm; and

2. May hunt deer with a crossbow

(b) The youth firearm season shall be open under statewide deer requirements.

(c) The crossbow modern firearm, and muzzleloader seasons shall be open under statewide deer requirements with equipment restrictions as noted in paragraph (a) of this subsection.

(4) Beaver Creek WMA. The quota hunt shall be for any deer for two (2) consecutive days beginning the first Saturday in November.

(a) The limit shall be one (1) deer during the quota hunt.

(b) A deer hunter shall not take an antlered deer whose antlers have an outside spread of less than fifteen (15) inches.

(5) Boatwright WMA.

(a) On the Swan Lake Unit, the archery season shall be open under statewide deer requirements through October 14 and the October youth deer season shall be open under statewide deer requirements; and

(b) On the Peal Unit and Omstead Unit, the crossbow youth firearm, modern firearm and muzzleloader seasons shall be open under statewide deer requirements.

(6) Cedar Creek Lake WMA. The crossbow season shall be open under statewide deer requirements.

(7) Central Kentucky WMA. The archery hunt shall be for any deer.

(a) On Wednesdays, between the second week in September through December 17, except during scheduled field trials as posted on the area bulletin board; and

(b) December 18 through the third Monday in January.

(8) Clay WMA.

(a) On the main tract, crossbow and youth firearm seasons shall be open under statewide deer requirements, except archery hunting shall be prohibited during the youth fox hunting field trials as established in 301 KAR 2:049.

(b) On the Manetta Booth Tract, the youth firearm seasons shall be open under statewide deer requirements.

(c) The quota hunt shall be for any deer and shall be for two (2) consecutive days beginning the first Saturday in November.

(9) Dewey Lake WMA.

(a) The archery and youth firearm season shall be open under statewide deer requirements for antlered deer only.

(b) A deer hunter shall not take an antlered deer whose antlers have an outside spread of less than fifteen (15) inches.

(10) Dix River WMA. The crossbow, youth firearm, and muzzleloader seasons shall be open under statewide deer requirements.

(11) Fishtrap Lake WMA.

(a) The quota hunt shall be for any deer for two (2) consecutive days beginning on the Saturday before Thanksgiving. The limit shall be one (1) deer.

(b) The youth firearm season shall be open under statewide deer requirements.

(12) Grayson Lake WMA.

(a) An open youth hunt shall:

1. Be the first Saturday in November for two (2) consecutive days;

2. Be limited to [the first 300] youth hunters age 15 and under;

3. Require check-in from noon to 8 p.m. Eastern Time on the
VOLUME 33, NUMBER 1 – JULY 1, 2006

day before the hunt or between 5:30 a.m. and 8 p.m. Eastern Time
on hunt days;
  4. Check-out as follows:
    a. When finished hunting;
    b. When the hunter’s bag limit is reached; or
    c. By 8 p.m. Eastern Time on the final day of the hunt.
  5. Have a two (2) deer bag limit, only one (1) of which may be an antlered deer;
  6. Have bonus deer permits apply; and
  7. Except to travel through Grayson Lake WMA on an estab-
lished public road to use an area designated open by a sign, a
person who has not checked in shall not enter the Grayson Lake
WMA during the open youth hunt.
(a) The property of Camp Webb shall be open for a mobility-
impaired deer [tag] hunting event during the October youth [quota]
hunt as established in 301 KAR 3:110.
(c) The crossbow hunt shall be for any deer from the first Sat-
urdav in September through the third Monday in January, except
during the November open youth [quota] hunt.
(d) The statewide youth firearm season shall be open under
statewide deer requirements.
(13) Green River Lake WMA.
(a) The quota hunt shall be for any deer for two (2) consecutive
days beginning the first Saturday in November.
(b) A deer hunter shall not take an antlered deer whose antlers have an outside spread of less than fifteen (15) inches.
(c) For the purposes of check-in and check-out times, the
Green River Lake WMA shall be considered to be located in the
Eastern Time Zone.
(14) Higginson-Henry WMA.
(a) The quota hunt shall be for any deer for two (2) consecutive
days beginning the first Saturday in December.
(b) A deer hunter shall not take an antlered deer whose antlers have an outside spread of less than fifteen (15) inches.
(15) J.C. Williams WMA. The crossbow season shall be open under statewide deer requirements.
(16) Kentucky River WMA. The crossbow season shall be open under statewide deer requirements.
(17) Kliber WMA.
(a) The crossbow season shall be open under statewide deer
requirements, except during a quota hunt.
(b) The quota hunts shall be for any deer as follows:
  1. The first quota hunt shall be for two (2) consecutive days
    beginning the first Saturday in November, and
  2. The second quota hunt shall be for two (2) consecutive days
    beginning the first Saturday in December.
(c) The youth firearm season shall be open under statewide
deer requirements.
(18) Lake Barkley WMA. Open under statewide requirements for
deer except that the North Refuge is closed from November 1 to
February 15 and Duck Island is closed from October 15 to
March 15.
(19) Lewis County WMA.
(a) The modern firearm and youth firearm seasons shall be
open under statewide deer requirements, except that the use of
centerfire rifles and handguns shall be prohibited.
(b) The muzzleloader season shall be open as follows:
  1. The October season shall be open under statewide require-
ments; and
  2. In the December season, only archery and crossbow
equipment shall be permitted.
(c) The crossbow season shall be open under statewide deer
requirements.
(20) Livingston County WMA. The crossbow, youth firearm,
muzzleloader, and modern firearm seasons shall be open under
statewide deer requirements, except a person shall not hunt deer
with a modern gun during the modern firearm deer season as
specified in 301 KAR 2:172.
(21) Curtis Gates Lloyd WMA. The crossbow season shall be
open under statewide deer requirements.
(22) [24] Meade-Westervaco public hunting areas. Statewide
deer requirements shall apply. In addition, a person hunting on
Meade-Westervaco property:
(a) Shall possess a Meade-Westervaco Hunting Permit;
(b) Shall not hunt from or place a tree stand within fifty (50)
yards of the property line; and
(c) The portion of the area south of Westervaco Road shall be
open to archery deer hunting through October 31 and closed to
public access between November 1 and March 15. The area shall
be open for the statewide October youth firearm season and early
muzzleloader weekend.
(23) [25] Mill Creek WMA. The quota hunt shall be for any
deer for two (2) consecutive days beginning the first Saturday in
November. The limit shall be one (1) deer.
(24) [26] Mud Camp Creek WMA. The crossbow youth fire-
arm, and muzzleloader seasons shall be open under statewide
deer requirements.
(25) [27] Mullins WMA. The crossbow season shall be open
under statewide deer requirements.
(26) [28] Ohio River Islands WMA. On the Stewart Island
Unit:
(a) The muzzleloader season shall be for any deer for two (2)
days beginning the third Saturday in October.
(b) The archery season shall be for any deer from the first
Saturday in September through October 14.
(c) The October youth season shall be open under statewide
deer requirements.
(27) [29] Paintsville Lake WMA.
(a) The quota hunt shall be for any deer for two (2) consecutive
days beginning the first Saturday in November.
(b) The youth firearm season shall be open under statewide
deer requirements.
(c) A deer hunter shall not take an antlered deer whose antlers have an outside spread of less than fifteen (15) inches.
(28) [30] Peabody WMA.
(a) The crossbow, youth firearms and muzzleloader seasons shall be open under statewide deer requirements.
(b) The modern firearm season shall be open under statewide
deer requirements for ten (10) consecutive days beginning the
second Saturday in November.
(29) [31] Pennyrile State Forest-Tradewater WMA.
(a) The quota hunt shall be for any deer for two (2) consecutive
days beginning the first Saturday in November.
(b) A deer hunter shall not take an antlered deer whose antlers have an outside spread of less than fifteen (15) inches.
(30) [32] Pioneer Weapons WMA. Statewide requirements
shall apply except that a person:
(a) Shall not use a breech-loading gun or any other type of
modern firearm;
(b) Shall not use an in-line muzzleloading gun;
(c) Shall not use a scope or optical enhancement; and
(d) May use a crossbow during the entire archery season.
(31) [33] Dr. James R. Rich WMA.
(a) The crossbow season shall be open under statewide deer
requirements, except during a quota hunt.
(b) The quota hunts shall be for any deer as follows:
  1. The first quota hunt shall be for two (2) consecutive days
    beginning the first Saturday in November; and
  2. The second quota hunt shall be for two (2) consecutive days
    beginning the first Saturday in December.
(c) The youth firearm season shall be open under statewide
deer requirements.
(32) [34] Sloughs WMA.
(a) On the Sauerkraut Unit, the archery, muzzleloader and
youth firearm seasons shall be open under statewide deer
requirements through October 31, except that the Cranshaw and
Duncan II Tracts shall be open under statewide deer requirements
through the end of modern firearm season [November 27].
(b) On the remainder of the WMA, the crossbow, modern fire-
arm, muzzleloader and youth firearm seasons shall be open under
statewide deer requirements.
(33) [35] South Shore WMA.
(a) On the Youth Firearm, October muzzleloader and modern fire-
arm seasons shall be open under statewide deer requirements
through November 14, except that the use of centerfire rifles and
handguns shall be prohibited.
(b) The archery season shall be open under statewide deer
requirements, except the area shall be closed November 15
through January 15.

(a) A person shall not hunt deer on the main block of Robinson Forest.

(b) The muzzleloader, modern firearm, and youth firearm seasons shall be open under statewide deer requirements, except a person shall not hunt deer with a modern gun.

(c) The crossbow season shall be open under statewide deer requirements.

(d) The crossbow, modern firearm, and muzzleloader seasons shall be open under statewide deer requirements.

(e) The youth firearm season shall be open under statewide deer requirements.

(f) The crossbow season shall be open under statewide deer requirements, except that it shall be closed during the quota hunt.

(g) All tracts, except Tract 8A, shall be open under statewide deer requirements for the archery and crossbow seasons except that areas shall be closed during quota and firearm deer hunts.

(h) Tracts 1-6 shall be open to shotgun and muzzleloader hunters participating in the quota and open firearm deer hunts. Tract 7 and "A" Tracts shall not be open for quota or firearm deer hunts.

(i) The quota hunt shall be for any deer for two (2) consecutive days beginning the third Saturday in November.

(j) The firearms season shall:

1. Be the second Saturday after Thanksgiving for two (2) consecutive days;
2. Be limited to the first 300 hunters;
3. Require check-in from 8 a.m. to 8 p.m. Central Time on the day before the hunt or between 8:00 a.m. and 7 p.m. Central Time on hunt day;
4. Check out as follows:
   a. When finished hunting;
   b. When the hunter's bag limit is reached; or
   c. By 7 p.m. Central Time on the final day of the hunt;
5. Have a two (2) deer bag limit, only one (1) of which may be an antlered deer;
6. Have bonus deer permits apply; and
7. Except to travel through West Kentucky WMA on an established public road or to use an area designated open by a sign, a person who has not checked-in shall not enter the West Kentucky WMA during firearm season.

(e) Firearm hunters shall not use a breech-loading rifle or breech-loading handgun.

(f) A person shall not carry a firearm in posted zones.

(g) Archery and crossbow hunters shall check-in with U.S. Energy Corporation personnel before hunting on the "A" Tracts.

(h) The crossbow, modern firearm, and muzzleloader seasons shall be open under statewide deer requirements except a person shall not take antlerless deer with a firearm during the modern firearm deer season.

(i) The youth firearm season shall be open under statewide deer requirements.

(j) The mentor quota hunt shall be for two (2) consecutive days beginning the first Saturday in November. There shall be no more than two (2) youths for each mentor and no more than one (1) mentor for each youth. Mentors shall not take antlered deer. Youths may take any deer.

(k) A deer hunter shall not take an antlered deer whose antlers have an outside spread of less than fifteen (15) inches.

(a) The quota hunt shall be for any deer on the second Saturday in December for persons with a disability which impairs their mobility as defined in 301 KAR 3.026.

(b) The area shall be closed to the statewide archery season.

MARK S. CRAMER, Deputy Commissioner
For DR. JONATHAN GASSETT, Commissioner
GEORGE WARD, Secretary
APPROVED BY AGENCY: March 3, 2006
FILED WITH LRC: April 14, 2006 at 10 a.m.
CONTACT PERSON: Rose Mack, Kentucky Department of Fish and Wildlife Resources, 1 Sportsman's Lane, Frankfort, Kentucky 40601, phone (502) 564-7109, ext. 441, fax (502) 564-0006.

JUSTICE AND PUBLIC SAFETY CABINET
Department of Corrections
Sex Offender Risk Assessment Advisory Board
(As Amended at ARRS, June 13, 2006)

501 KAR 8:190. Approval process for mental health professionals performing comprehensive sex offender presence evaluations and treatment of sex offenders.

RELATES TO: KRS 17.550-17.991
STATUTORY AUTHORITY: KRS 17.554(1), 17.564
NECESSITY, PURPOSE, AND CONFORMITY: KRS 17.554(1) requires the Sex Offender Risk Assessment Advisory Board to approve providers to conduct court-ordered comprehensive sex offender presence evaluations and treatment of sex offenders. This administrative regulation establishes approval requirements for providers.

Section 1. Definitions. (1) "Approved provider" is defined by KRS 17.550(3).

(2) "Board" is defined by KRS 17.550(1).

(3) "Comprehensive sex offender presence evaluation" means a comprehensive mental health evaluation by an approved provider that includes a focus on the clinical data necessary to address the factors listed in KRS 17.554(2).

(4) "Corrective action plan" means a plan submitted by the approved provider and accepted by the board that requires an approved provider to take specific steps to be in compliance with this administrative regulation.

(5) "Sex offender" is defined by KRS 17.550(3).

(6) "Victim" is defined by KRS 17.550(1). (means an individual who suffers direct or threatened physical, financial, or emotional harm as a result of the commission of a sex crime. If the victim is a minor or legally incapacitated, "victim" means a parent, guardian, custodian, or court-appointed special advocate. If the victim is deceased, the relationship is not the defendant; the following relations shall be disregarded as "victim":

(a) The spouse;
(b) The adult child. If paragraph (a) of the subsection does not apply,
(c) A parent. If paragraphs (a) and (b) of this subsection do not apply;
(d) A sibling. If paragraphs (a) through (c) of this subsection do not apply;
(e) A grandparent. If paragraphs (a) through (d) of this subsection do not apply) [as defined by KRS 17.600(4)]

Section 2. Qualifications of Approved Providers. To qualify as an approved provider, an applicant shall, in addition to meeting the requirements of KRS 17.553(3):

(1) Have completed forty (40) hours of specialty training pro-
vided or approved by the board under Section 8 of this administrative regulation including the following:
(a) Characteristics and offense patterns of sex offenders;
(b) Treatment modalities used with sex offenders;
(c) Legal and ethical issues in the risk assessment of sex offenders;
(d) Victim’s Issues, not to exceed two (2) hours of credit against the total requirement; and
(e) Issues related to the assessment of juvenile and female sex offenders; and
(1) Use of the appropriate actuarial or evaluation instruments;
(2) Be in compliance with the ethical standards of professional practice as promulgated by the Kentucky licensing or certifying body under which he has professional status; and
(3) Have a minimum of 250 hours documented experience conducting sex offender evaluations and clinical contact in sex offender treatment, including a minimum of:
(a) Sixty (60) hours documented experience conducting sex offender evaluations or completion of [complete] a practicum as described in Section 6 of this administrative regulation; and
(b) 190 hours documented clinical contact conducting sex offender treatment or completion of [complete] a practicum as described in Section 6 of this administrative regulation.

Section 3. Duties. (1) If an approved provider performs a comprehensive sex offender presentation evaluation for a sex offender, he shall not provide treatment for personal financial gain for the sex offender for six (6) months following that assessment.
(2) If an approved provider has provided treatment for a sex offender, he shall not perform a comprehensive sex offender presentation evaluation for personal financial gain for the sex offender for six (6) months following the treatment.
(3) An approved provider shall:
(a) Submit the first four (4) evaluations prepared after becoming an approved provider for review by the board;
(b) Comply with the ethical standards of professional practice as promulgated by the Kentucky licensing or certifying body under which he has professional status; and
(c) Complete eight (8) hours of continuing education approved or provided by the board by December 31 in each calendar year following the year in which the individual becomes an approved provider.
1. The board may grant an extension of six (6) months in which to complete hours of continuing education upon request for good cause shown. To request an extension, an approved provider shall:
   a. Submit a plan detailing how the uncompleted hours will be obtained within the next six (6) months, if a plan to make up uncompleted hours has not been requested or approved by the board for the approved provider for either of the two (2) preceding calendar years;
   b. Submit a plan detailing how the next year’s eight (8) hours will be obtained within the next calendar year; and
   c. State the reasons for the request for extension.
2. The request shall:
   a. Be made in writing;
   b. Include the number of hours that need to be completed for the calendar year;
   c. Include proof of any hours that were completed; and
   d. Be postmarked on or before December 31 of the calendar year for which the hours were required.

Section 4. Approval Procedures. (1) The board shall approve an applicant as an approved provider if he meets the applicable qualifications specified in Section 2 of this administrative regulation and is not otherwise disqualified by the provisions of Section 5 of this administrative regulation.
(2) An individual may apply to the board for approval status as an approved provider by submitting:
(a) A written request for approval, which shall include the following:
   1. Full name;
   2. Business address;
   3. Home address;
   4. Daytime telephone number;
   5. Fax number, if available; and
   6. Social Security number;
   (b) Documentary evidence of his qualifications; and
   (c) Evidence that he has remedied the cause for the denial or revocation, if approval was previously [re] denied or revoked under Section 8 of this administrative regulation.
(3) The board shall determine that an application is incomplete if:
(a) The documentation of qualifications is insufficient to meet the required qualifications in Section 2 of this administrative regulation;
(b) The board is unable to verify the authenticity of the documentation of qualifications; or
(c) Any of the information required in subsection (2) of this section is not submitted.
(4) If the board determines that an application is incomplete, the board shall specify to the applicant additional documentation or information that is required or identify the information that cannot be verified.
(5) The board shall notify the applicant of its intent to approve or deny the application for approval in writing no later than ninety (90) days after receiving a complete application for approval.
(6) Unless approval has been revoked in accordance with Section 5 of this administrative regulation, the board shall renew the approval status of an approved provider upon request if:
(a) He submits documentation of completion of at least eight (8) hours per year of continuing education provided or approved by the board under Section 8 of this administrative regulation; and
(b) The approved provider continues to meet the requirements of this administrative regulation and KRS Chapter 17 for approved provider status.
(7) The board shall maintain a list of approved providers to be submitted to the Administrative Office of the Courts annually.

Section 5. Denial or Revocation of Approval. (1) The board shall deny, suspend or revoke approval if an applicant or an approved provider has:
(a) Been convicted of or pled guilty to a felony criminal offense or a misdemeanor offense against a person;
(b) Had a domestic violence protective order issued against him within the previous five (5) years;
(c) Failed to meet the qualifications for approval set forth in Section 2 of this administrative regulation;
(d) Failed to be in compliance with the ethical standards of professional practice as promulgated by the Kentucky licensing or certifying body under which he has professional status;
(e) An alcohol or drug abuse problem as defined in KRS 222.050(3);
(f) Falsified any information or documentation, or has concealed a material fact, in his request for approval;
(g) Failed to implement a corrective action plan imposed by the board in accordance with Section 7 of this administrative regulation;
(h) Three (3) or more evaluations which the board finds are below standard upon review;
(i) Failed to comply with the comprehensive sex offender presentation evaluation procedure established in 501 KAR 6:200;
(j) Shown an inability to [adequately] conduct an evaluation with reasonable skill;
(k) Accepted a gift or favor from a sex offender being assessed, from the family of the sex offender being assessed, or from their agent; or
(l) Provided a gift or favor to a sex offender being assessed, to the family of the sex offender being assessed, or to their agent;
(m) Failed to comply with an order of the board; or
(n) Failed to comply with instructions of the board during an investigation.
(2) The board may deny, suspend or revoke approval if an applicant or an approved provider has:
(a) Been convicted of or pled guilty to any misdemeanor criminal offense that is not against a person;
(b) Had a sanction applied against his mental health professional licensure or certification at any time in the past two (2) years;
(c) Failed to comply with the duties set forth in Section 3 of this
administrative regulation;
(d) Less than three (3) evaluations that the board finds are low standard upon review;
(e) Failed to comply with the treatment requirements established in 501 KAR 6:220;
(f) Failed to comply with the evaluation procedure established in 521 KAR 6:200; or
(g) Failed to comply with the requirements set forth by the board for the practicum or to successfully complete the practicum, if so required by Section 2 of this administrative regulation.

(3) If the board intends to deny, suspend or revoke approval, it shall:
(a) Serve a notice of intent to deny, suspend, or revoke approval to the applicant or approved provider; and
(b) Notify the applicant or approved provider of his hearing rights, in accordance with KRS 17.560.

(4) An approved provider who has had his approval revoked shall be ineligible to apply to be an approved provider until the second anniversary of the date his approval was revoked unless his revocation was for failure to obtain the required eight (8) hours of continuing education and the required hours have been obtained.

Section 6. Practicum Requirements. (1) A practicum required by Section 2 of this administrative regulation shall be conducted by an approved provider who shall:
(a) Have a minimum of 2000 hours of experience conducting sex offender evaluations and clinical contact in sex offender treatment, including a minimum of:
   1. 500 hours conducting sex offender evaluations; and
   2. 1,500 hours of clinical contact in sex offender treatment;
(b) Be an approved provider in good standing with the board;
(c) Submit a request to conduct a practicum for each participant and be approved by the board to conduct the practicum;
(d) Directly observe the practicum participant’s clinical practice in person or through video or audio tape.
(e) Examine and approve all comprehensive sex offender presentence evaluations performed by the practicum participant; and
(f) Give written notice to the Board if he determines that the practicum participant’s performance does not comply with the provisions of this administrative regulation, 501 KAR 6:200, or 501 KAR 6:220.

(2) To complete a practicum required by this administrative regulation, the participant shall:
(a) Have a minimum of four (4) hours of face-to-face contact with the approved provider conducting the practicum each month, which shall include case discussion, review of reading assignments, skill building, and review of audio or video tape of actual clinical practice;
(b) Obtain a minimum of sixty (60) hours experience conducting sex offender evaluations;
(c) Obtain a minimum of 190 hours of clinical experience with face-to-face contact conducting sex offender treatment;
(d) Participate in the practicum for a minimum of six (6) months; and
(e) Meet the requirements of the practicum within a maximum of eighteen (18) months.

(3) If an applicant has a portion of the minimum hours required to qualify as an approved provider in Section 2(3) of this administrative regulation, he shall participate in the practicum as described in subsections (1) and (2) of this section and may obtain only the hours needed to meet the minimum qualifications in Section 2(3) of this administrative regulation.

Section 7. Monitoring. (1) The board may:
(a) Investigate a formal complaint, verified by affidavit, concerning an approved provider, if the complaint alleges a failure to comply with the provisions of this administrative regulation; and
(b) Refer a complaint against an approved provider, which relates to an unethical practice or practice which may be outside the approved provider’s scope of practice, to the appropriate Kentucky licensure or certification board.

(2) The board may investigate and evaluate an approved provider’s adherence to the provisions of this administrative regulation, 501 KAR 6:200, or 502 KAR 6:220, on its own initiative.

(3) Board staff may monitor the following activities:
(a) Interviewing a sex offender or victim, if consent is given by the sex offender or victim for the interview;
(b) Reviewing evaluation or treatment records maintained by an approved provider on a sex offender;
(c) Direct observation of the evaluation or treatment of a sex offender;
(d) Interviewing judicial, correctional, law enforcement officials or other individuals [agency personnel] that interact with an approved provider in relation to comprehensive sex offender presentence evaluations or treatment of sex offenders.

(4) If an approved provider fails to comply with provisions of this administrative regulation, the board shall notify him in writing of its determination and may:
(a) Require the approved provider to submit a corrective action plan for approval by the board;
(b) Impose a corrective action plan; or
(c) Revoke approval in accordance with Section 5 of this administrative regulation.

(5) If the board requires an approved provider to comply with a corrective action plan, it shall review plan compliance within ninety (90) days.

Section 8. Approval of Specialty Training and Continuing Education. (1) Specialty training,
(a) Specialty training, as required in Section 2 of this administrative regulation, shall be approved or provided by the board based on its nature or relevance;
(b) An applicant seeking approval of a specialty training course shall submit to the Board the following:
   1. A certificate of attendance which shall include the number of hours of training received;
   2. If a certificate of attendance is not available, an affidavit that includes the number of hours of education received; and
   a. An agenda from the seminar that describes topics and length of time spent on each topic.
   b. [2] [4] An agenda from the seminar that describes topics
   c. The board may require the applicant to provide course materials from the training seminar or additional information, if it is unable to adequately determine the nature or relevance of the training provided at the seminar from the materials submitted under subsection (1)(b) of this section.
(2) Continuing education.
(a) Continuing education, as required in Section 3 of this administrative regulation, shall be approved or provided by the board based on its nature or relevance;
(b) An approved provider seeking approval of continuing education hours shall submit to the Board the following:
   1. A certificate of attendance that shall include the number of hours of education received;
   2. If a certificate of attendance is not available, an affidavit that includes the number of hours of education received; and
   a. An agenda from the seminar, which describes topics and length of time spent on each topic.
   b. [2] [4] An agenda from the seminar, which describes topics
   c. The board may require the applicant to provide course materials from the seminar or additional information, if it is unable to adequately determine the nature or relevance of training provided at the seminar from the materials submitted under subsection (2)(b) of this section.

JOHN D. REES, Commissioner
THOMAS R. LITZ, Pay.D., Chairperson
APPROVED BY AGENCY: March 16, 2006
FILED WITH LRC: April 13, 2006 at 3 p.m
CONTACT PERSON: Amy V. Barker, Justice and Public Safety Cabinet, Office of Legal Services, P.O. Box 2440, Frankfort, Kentucky 40602-2400, phone (502) 564-4301 ext. 338 or 333, fax (502) 564-5229.
JUSTICE AND PUBLIC SAFETY CABINET
Department of Criminal Justice Training
(As Amended at ARRS, June 13, 2006)


RELATES TO: KRS 15.539, 15.560
STATUTORY AUTHORITY: KRS 15.590
NECESSITY, FUNCTION, AND CONFORMITY: KRS 15.590
requires the Commissioner of the Department of Criminal Justice Training to promulgate administrative regulations regarding training and telecommunications practices. This administrative regulation establishes the course and graduation requirements of the Telecommunications Academy - non-CJIS.

Section 1. Definitions. (1) "Academy" means the 128 [120] hour Telecommunications Academy course conducted by the department that does not include training on the Criminal Justice Information System (CJIS).
(2) "KLEC" means the Kentucky Law Enforcement Council.

Section 2. Academy Content. The academy shall consist of the following six (6) areas:
(1) Basic telecommunications;
(2) Emergency medical dispatch;
(3) Cardiopulmonary resuscitation (CPR);
(4) Critical incidents; [and]
(5) Spanish for the telecommunicator; and

Section 3. Academy Graduation Requirements. (1) To graduate from the academy, a trainee shall:
(a) Successfully complete a minimum of 128 [120] hours of KLEC-approved training;
(b) Attain a passing score on all examinations for which a numerical score is assigned, as follows:
   1. Eighty (80) percent on the emergency medical dispatch written examination;
   2. Eighty (80) percent on the CPR written examination; and
   3. Seventy (70) percent on all other examinations for which a numerical score is assigned;
(c) Pass all examinations for which a pass or fail designation is assigned; and
(d) Successfully complete all other assignments, exercises, and projects included in the academy. After-hours assignments may be required, and if required, they shall be successfully completed to pass the training area for which they were assigned.

Section 4. Reexaminations. (1) A trainee shall be permitted one (1) reexamination.
(2) A trainee who fails an examination shall not be reexamined:
(a) Earlier than forty-eight (48) hours from the original examination; or
(b) Later than the last scheduled day of the academy.
(3) A trainee shall be considered to have failed the academy if the trainee fails a reexamination.

Section 5. Failure and Repetition of Academy. (1) A trainee who has failed an academy shall be permitted to repeat one (1) academy in its entirety during the following twelve (12) months.
(2) The trainee or his agency shall pay all fees for the repeated academy.

Section 6. Absence. (1) A trainee may have excused absences from the academy with approval of the Professional Development [in-service training] Branch manager or telecommunications training section supervisor.
(2) If an excused absence causes a trainee to miss any of the 128 [120] hours of the academy, the training shall be made up through an additional training assignment.

Section 7. Circumstances Preventing Completion of the Academy. If a trainee is prevented from completing the academy due to extenuating circumstances beyond the control of the trainee, including injury, illness, personal tragedy, or agency emergency, he shall be permitted to complete the unfinished areas of the academy within 180 days immediately following the termination of the extenuating circumstance, if the:
(1) Extenuating circumstance preventing completion of the academy does not last for a period longer than one (1) year; and
(2) Failure to complete is not caused by a preexisting physical injury or preexisting physiological condition.

Section 8. Termination of Employment While Enrolled. (1) If, while enrolled in the academy, a trainee's employment as a telecommunicator is terminated by resignation or dismissal and he is unable to complete the academy, he may complete the remaining training within one (1) year of reemployment as a telecommunicator.
(2) The trainee shall repeat the academy in its entirety if:
(a) The break in employment exceeds one (1) year; or
(b) The termination of employment is a result, directly or indirectly, of disciplinary action taken by the department against the trainee while enrolled in the academy.

Section 9. Maintenance of Records. All training records shall be:
(1) Available to the KLEC and the Secretary of the Justice Cabinet for inspection or other appropriate purposes; and
(2) Maintained in accordance with KRS Chapter 171.

JOHN W. BIZZACK, Ph.D., Commissioner
APY: March 17, AGENCY: March 17, 2006
FILED WITH LRC: March 17, 2006 at 10 a.m.
CONTACT PERSON: Stephen D. Lynn, Assistant General Counsel, Department of Criminal Justice Training, Funderburk Building, 521 Lancaster Avenue, Richmond, Kentucky 40475-3102, phone (859) 622-3073, fax (859) 622-5027.

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department of Labor
Office of Occupational Safety and Health
(As Amended at ARRS, June 13, 2006)

803 KAR 2:180. Recording; reporting; statistics.

RELATES TO: KRS 338.121(3), 338.161, 29 C.F.R. Part 1904
STATUTORY AUTHORITY: KRS 338.061, 338.161
NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.161(1) requires [authorizes] the Office of Occupational Safety and Health, Department of Labor, Environmental and Public Protection Cabinet [Department of Workplace Standards] to promulgate administrative regulations requiring employers to report their occupational safety and health statistics. 29 C.F.R. Part 1904 establishes the federal requirements for the recording and reporting of occupational illnesses and injuries. This administrative regulation establishes recording and reporting requirements for employers covered under KRS Chapter 338 [as necessary and appropriate for enforcing the enforcement of KRS Chapter 338], for developing information regarding the causes and prevention of occu-
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Section 1. Definitions. (1) "Amputation" means an injury in which a portion of the body including bone tissue is removed.
(2) "Employee" is defined by KRS 338 015(2).
(3) "Employer" is defined by KRS 338 015(1).
(4) [(4) "Occupational Safety and Health Act" means the Kentucky Occupational Safety and Health Act of 1972—(KRS Chapter 338)]
(5) [(5) "Secretary of Labor" means the Secretary of the United States Department of Labor, or the Commissioner of the Department of Labor, Environmental and Public Protection (Secretary of the Kentucky Labor Cabinet).
(6) [(6) "Section 11(c) of the Act" means KRS 338.121(3)

Section 2. Employers shall comply with the requirements for recording and reporting of occupational injuries and illnesses established at 29 C.F.R. Part 1904, as of July 1, 2006, as amended by the definitions in Section 1 of this administrative regulation and the requirements in Section 3 of this administrative regulation.

Section 3. Reporting Fatalities, Amputations, or In-Patient Hospitalizations: (1) Employers shall orally report to the Kentucky Department of Labor, Office of Occupational Safety and Health, Division of Compliance, at (502) 564-3070, any work-related incident which results in the following:
(a) The death of any employee; or
(b) The hospitalization of three (3) or more employees.
(2) The report required under subsection (1) of this section shall be made within six (6) hours from the time the incident is reported to the employer, the employer's agent, or another employee. If the employer cannot speak with someone in the Frankfort office, the employer shall report the incident using the OSHA toll-free, central telephone number, 1-800-321-OSHA (1-800-321-6792).
(3) Effective November 1, 2006, through December 31, 2008, employers shall orally report to the Kentucky Department of Labor, Office of Occupational Safety and Health, Division of Compliance, at (502) 564-3070, any work-related incident which results in the following:
(a) An amputation suffered by an employee; or
(b) The hospitalization of fewer than three (3) employees within seventy-two (72) hours following the incident.
(4) The report required under subsection (3) of this section shall be made within seventy-two (72) hours from the time the incident is reported to the employer, the employer's agent, or another employee. Within eight (8) hours after the death of an employee as a result of a work-related incident or the hospitalization of three (3) or more employees as a result of a work-related incident is reported to the employer, the employer's agent, or another employee, the employer shall orally report the incident to the Kentucky Department of Labor, Office of Occupational Safety and Health, Division of Compliance, at (502) 564-3070. If the employer cannot speak with someone in the Frankfort office, the employer shall report the incident using the OSHA toll-free, central telephone number, 1-800-321-OSHA (1-800-321-6792).

RELATES TO KRS 216B.010-216B.130, 216B.330-216B.339, 216B.455, 216B.990


NECESSITY, FUNCTION, AND CONFORMITY: KRS 216B 040(2)(a)(i) 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 2004-276 reorganized the Cabinet for Health Services and the Cabinet for Families and Children and placed the Division of Health and Family Services (a Certificate of Need under the new cabinet) under the 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 that is 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://cfhs.ky.gov/obhp/con).
(4) "Days" means calendar days, unless otherwise specified [defined].
(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 employees, customers, or patrons of a business, race track, recreational facility or similar organization excluding a health care facility.
(9) "Long-term 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 2168.015(17).

(11) "Office or clinic" means the physical location at which health care services are provided.

(12) "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.

(13) "Owner" means a person as defined in KRS 2168.015(21) who is applying for the certificate of need and will be the licensee of the proposed health service or facility.

(14) "Practice" means the individual entity, or group that proposes to provide health care services and shall include: (a) the owners and operators of an [the] Office or clinic; or

(15) "Primarily" means a single majority or something that occurs at least fifty-one (51) percent of the time.

(16) "Proposed service area" means the geographic area the applicant proposes to serve.

(17) "Public information channels" means the Division of Communications in the Cabinet for Health and Family Services.

(18) "Public notice" means notice given through the Division of Communications in the Cabinet for Health and Family Services.

(19) "Qualified academic medical center" means:

(a) An institution of higher education which operates an accredited medical school within the Commonwealth of Kentucky;

(b) an institution, organization, or other entity which directly or indirectly owns or is under common control or ownership which an accredited medical school operated within the Commonwealth of Kentucky; or

(c) an individual, organization, entity, or other person which is qualified under Section 501(c)(3) of the Internal Revenue Code (26 U.S.C. 501(c)(3)) as a result of supporting or operating in support of an institution, organization, entity, or other person of a type or types referenced in paragraphs (a) or (b) of this subsection.

(20) "Secretary" means the Secretary of the Cabinet for Health and Family Services.

(21) (a) [40] (12) "Show cause hearing" means a hearing during which it is determined whether a person or entity has violated, before the cabinet at which a person is required to explain or demonstrate why that person is not required to obtain a certificate of need or is subject to the regulation set forth in subsection (3) of this section, or if the cabinet decided that the person is subject to the regulation set forth in subsection (3) of this section, the cabinet shall issue a certificate of need.

(13) "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. 482.66 and 486.446.

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 2168.095(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).
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 surgery 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
2. November.

(f) Public notice for long-term care beds and acute care hospitals includes 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 (PRUTF) 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 forty-five (90) 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 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 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 the 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 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; and

(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 requested, 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 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 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 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.
(2) 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 facility, which was closed at the healthcare facility end which was voluntarily discontinued by the applicant, shall be consistent with the State Health Plan under the following circumstances:
1. The termination or voluntary closure of the former healthcare service or facility;
   a. Was not the result of an order or directive by the cabinet, governmental agency, local body, or other regulatory authority;
   b. Did not occur due to 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; and
4. The application shall (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 and;
(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 Continuing Care Retirement Community (CCRC) provisions of the 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 non-state and 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 equal:
   a. 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.
   b. The average number of empty beds in the county of application and all contiguous counties to the county of application shall equal C.
   c. 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
   d. Accessibility. The cabinet shall determine if [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) If [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) If [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) If [whether] it is economically feasible for the applicant to implement and operate the proposal; and
(b) If applicable, if [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) If [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.455 (216B.456) and is to the same campus as a licensed psychiatric residential treatment facility.
(c) In addition to the provisions specified in KRS 216B.095(3)(a) through (c) pursuant to KRS 216B.095(1) [29], 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 ambulatory surgery-center that was existing and operating by July 15, 1997; it;
   1. 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 1, 2000.
   (e) 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 declassified;
   (c) 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. The [acquisition-and] relocation takes [take] place within the same county, the following restrictions shall apply:
   a. The application shall be filed on or before September 28, 2005; and
(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 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 (5) 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 (5) 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 2168.090 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 2168.115.

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 resubmitted 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 in 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:

(a1) 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 person or persons to whom the services will be provided, including proof of eligibility for the services;

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 services are aware of the necessity of the service to be provided to the person and have refused or are unable to provide the service;
   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.

(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 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.

(5) The person providing the emergency service may continue to alleviate the emergency circumstances without a certificate of need until:

(a) The emergency ceases to exist; or

(b) The cabinet issues a final decision to approve or disapprove the application for certificate of need.

(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 the emergency has ended.

(7) When the emergency circumstance ceases to exist, the CON holder shall notify the Division [Office] of Certificate of Need that it will no longer provide 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.

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 2163.061(1)(b) and 2163.0615.

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 date due.

(3) Failure to file documents in accordance with the schedule and manner provided in subsections (1) and (2) of this section shall result in the materials being returned to the sender and the cabinet shall not take additional action until the material is face-to-face with the cabinet, unless and until they are properly resubmitted.

(4) 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.

(5) [(4)] (c) In computing any period of time prescribed by this administrative regulation, the date of notice, decision or order shall not be included.

(6) [(3)] (d) 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) [(2)] Health facilities established without a certificate of need pursuant to KRS 216B.085 and not on the list of deferred persons as authorized by KRS 216B.085(2)(c) shall not be considered deferred persons for purposes of KRS 216B.085 and shall not have the right to request a public hearing pursuant to KRS 216B.085.

(2) [(3)] Upon request of 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.340. Any party may file with the cabinet a petition for removal based upon a conflict of interest supported by affidavit.

(2) [(3)] Unless otherwise specified herein, all hearings shall be conducted pursuant to this section.

(3) [(4)] The hearing officer shall preside over the conduct of each hearing and shall regulate the course of such proceedings in a manner which shall promote the orderly and prompt conduct of the hearing.

(4) [(5)] Notice of the time, 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 any nonsubstantive review hearing and not less than ten (10) business days prior to the date of any other [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.

(1) [(2)] 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) [(6)] Any motion, including a motion for summary judgment or a motion to dismiss which, if sustained, would eliminate the need for a hearing shall be filed with the Division and served on the party of record at least three (3) days prior to any nonsubstantive review hearing and at least three (3) business days prior to any other hearing. This shall not preclude a party from making a dispositive motion at the hearing based on facts or issues arising at or during the hearing. This provision shall be interpreted to allow a party to file a motion to dismiss or summary judgment if the hearing is scheduled to be held at least three (3) days prior to the scheduled date of the hearing.

(6) [(7)] Except as specified in Section 18 of this administrative regulation [Unless otherwise specified], any person that files any materials or items, including pleadings, with the Division of Certificate of Need, shall also deliver a copy to all opposing parties by personal service, facsimile, or electronic mail as well as by mail.

(1) [(2)] The hearing officer may convene a preliminary conference.

(2) [(3)] The purposes of the conference shall be:

(a) Formulate and simplify the issues; and

(b) Identify additional information and evidence needed for the hearing.

(3) [(4)] The hearing officer may dispose of pending motions.

(4) [(5)] A written summary of the preliminary conference and the order made at the conference shall be made a part of the record.

(5) [(6)] The hearing officer shall:

(a) Tape record the conference; and

(b) 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; and
   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 subpoena; or

4. Schedule dates for the submission of pretrial testimony, further preliminary conferences, and submission of briefs and documents.

(6) [(7)] [(9)] At least five (5) days prior to the scheduled date of any nonsubstantive review hearing and at least seven (7) business 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 deliver [leave] 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) [(8)] [(9)] If a hearing is requested on an application which has been deferred from a previous cycle and for which a hearing has 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.

(8) [(9)] A new party to the hearings shall file original Forms #3, #4 and #5.

(9) [(10)] Forms shall be filed in accordance with subsection (8) of this section.

(10) [(11)] [(10)] 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.

(11) [(12)] 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.

(12) [(13)] [(12)] 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.

1. Matters covered in direct examination;

2. At the discretion of the hearing officer, other matters relevant to the issues.

(13) [(14)] [(13)] A party that is a corporation shall be represented by an attorney licensed to practice in the Commonwealth of Kentucky.

(14) [(15)] [(14)] 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) Exclude any party or witness.

(15) [(16)] [(16)] 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] shall prohibit and exclude evidence or information which is irrelevant, immaterial, or unduly repetitious.

(16) [(17)] [(16)] Testimony presented at the hearing shall be done so un-
The hearing officer shall have discretion to designate the order of presentation of evidence and the burden of proof as to persuasion.

Witnesses shall be examined under oath or affirmation. Each party shall have the opportunity to present its case in the following manner:

(a) Make opening statements, with [although] each party is limited to twenty (20) minutes each;
(b) Introduce direct testimony of relevant, pertinent witnesses, with [although] all [such] testimony is also [shall be] submitted in writing;
(c) Offer documentary evidence into the record;
(d) Make closing statements, with [although] each party is limited to twenty (20) minutes each;
(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.

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) With all [such] individuals [shall make themselves] available at the time of the hearing for purposes of cross-examination.

At least five (5) business days prior to any hearing, the hearing officer shall file and serve 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. Witnesses may, at the discretion of the hearing officer:

(a) Appear through deposition or in person; and
(b) 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.

At least five (5) days prior to any non-substantive hearing, the direct testimony of all witnesses shall be filed and delivered to all parties. At least three (3) days prior to [although] a non-substantive hearing, objections to any portion of the proposed direct testimony shall be filed and delivered to all parties.

At least seven (7) business days prior to any other type of hearing, the party that bears the burden of proof shall file and deliver to opposing parties the written direct testimony of all witnesses they intend to introduce at the hearing. At least four (4) business days prior to the hearing, the opposing parties shall file and deliver the written direct testimony of all witnesses they intend to introduce at the hearing as well as objections to any portion of the proposed direct testimony previously filed.

At least two (2) business days prior to the hearing, the party that bears the burden of proof shall file and deliver objections to any portion of the proposed direct testimony submitted by the other parties.

Failure to make available an individual for purposes of cross-examination shall result in that party not being permitted to offer any written direct testimony from that individual.

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 delivered to other parties at least:
   1. Five (5) days prior to a [fairy] non-substantive review hearing;
   2. Seven (7) business days prior to any other hearing. [Seven (7) business [working] days before the hearing for non-substantive review applications, or

Five (5) business [working] days for non-substantive review applications.

A document shall not be incorporated into the record by reference without the permission of the hearing officer. Any referenced document shall be properly identified.

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.

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.

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 216.062(1) and 216B 095(1).

The deadlines established with respect to hearings shall be modified, if agreed to by all parties and the hearing officer.

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) A 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.

If a hearing was [held] pursuant to subsection (1)(a), (b), or (c) of this section, the hearing officer that presided over the hearing [the cabinet] shall enter a decision to grant or deny a request for reconsideration within thirty (30) days of the request being filed.

If a hearing was [held] pursuant to subsection (1)(d) of this section, the secretary shall enter a decision to grant or deny a request for reconsideration within thirty (30) days of the request being filed.

If reconsideration is granted:

(a) A hearing shall be held by the cabinet in accordance with the applicable provisions of Section 16 or 18 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.

If reconsideration is granted on the grounds that a public hearing was not held pursuant to KRS 216B.065, 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. KHC Hospitals, Ky., 751 S.W.2d 369 (1988), in order to determine if [whether] a persons 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.
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) [Health facility 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 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 enjoined shall have the burden of showing cause why that person should not be enjoined:
1. To have established or to 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.

(c) 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) [Gl 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) [Gi 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.

(7) [Gl Show cause hearings shall be conducted in accordance with the provisions of Section 16 of this administrative regulation.
(8) 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 the individual or entity (hereafter referred to as "person"):
(a) Has [Have] not established, or is not [are] operating, a health facility or health service in violation of the provisions of KRS Chapter 216B or this administrative regulation; or
(b) Is [Are] not subject to the penalties provided by KRS 216B.990 for specific violations of the provisions of KRS Chapter 216B.

(Ga) Except as provided by paragraph (b) or (c) of this subsection, if [in the event it is alleged that an office or clinic (referred to as "office" in this subsection)] [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.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:
1. [Gl The practice claiming the exemption is 100 percent owned in any organizational form recognized by the Commonwealth by the individual physician, dentist, or other practitioner of the hearing arts or group of physicians, dentists, or other practitioners who are the legal partners (hereafter collectively referred to as "physician") claiming the exemption; or
2. [Gb] 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; or
3. [Gc] Services or equipment covered by the State Health Plan which are offered or provided at the office or clinic shall be primarily provided to patients whose medical conditions are being treated or managed by the practice; or
4. [Gd] A physician or physicians licensed to practice and employed in Kentucky within the practice claiming the exemption is responsible for in; all decisions regarding the care and treatment provided to patients; or
5. [Ge] Patients are treated on an outpatient basis and are not maintained overnight on the premises of the office or clinic; or
6. [Gf] Services or equipment covered by the State Health Plan which are offered or provided at the office or clinic are related to the professional services offered to patients of the practice claiming the exemption.

7. [Gg] 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; and
8. Nothing in this section shall limit or prohibit the continued operation of an office or clinic which was established and in operation prior to January 1, 2006, and operating pursuant to and in accordance with the following:
(a) Provisions of a Certificate of Need advisory opinion issued specifically with respect to that office or clinic;
(b) Provisions of an Attorney General opinion issued specifically with respect to that office or clinic;
(c) An order issued with respect to that office or clinic by a court of competent jurisdiction in the Commonwealth of Kentucky.

(A) (c) Notwithstanding paragraphs (b) and (c) in this subsection, any practice owned entirely by a radiologist or group of radiologists shall demonstrate the following:
1. Compliance with paragraph (a)(1), (5), and (6) of this subsection;
2. The radiologists shall regularly perform physician services (e.g., test interpretations) at the location where the diagnostic tests are performed, including Interpretations by or through teleradiology;
3. [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.
(c) An office or clinic [3] Notwithstanding paragraph (a)(1), (5), and (6) of this subsection, is intended to prohibit diagnostic images from being interpreted by or through teleradiology.

(A) (c) (Notwithstanding paragraph (a)(1), (5), and (6) of this subsection, an office or clinic) 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 or clinic shall be licensed to practice in Kentucky and shall be employed by the Qualified Academic Medical Center and
2. [a] The office was established and in operation prior to January 1 [3], 2006; or
(b) The office does not provide any services or equipment covered by the State Health Plan, or
(c) [The office is not providing care and treatment to patients, 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.

(A) (c) 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.
(A) (c) 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 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.
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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 common control or 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 601(6)(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 type referred to in subparagraph 1 or 2 of this paragraph.

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.

11. 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 ten (10) business days prior to the date of the hearing; and
(b) Published in the Certificate of Need newsletter if applicable.

13. At least seven (7) business 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 proceeding:

(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. 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 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. 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.

19. 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) of this section, the cabinet shall take the following actions:

(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.

20. The deadlines established with respect to hearings shall be modified, if agreed to by all parties and the hearing officer.

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 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 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 #8, 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) If [whether] the required elements have been completed; and
(b) If the required elements have not been completed, if [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 2168.086.

(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.

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 a 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 conducting its annual licensure inspection, it shall refer this violation for a show cause hearing in accordance with Section 18 of the administrative regulation.

Section 21. Biennial Review. (1) Certificate of need holders may be subject to biennial review to determine if 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)(6)(9) 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 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.

(8) An affected person may request a public hearing regarding an advisory opinion in writing within thirty (30) days of the notice of the advisory opinion. The state Health Facilities established without a certificate of need pursuant to KRS 216B.20(2)(a) shall not be considered affected persons for purposes of all sections and shall not have the right to request a hearing regarding an advisory opinion.

(9) 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.

(10) The cabinet shall enter a final decision regarding the advisory opinion, within forty-five (45) days of the completion of the public hearing.

(11) 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 after the 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 over 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 available 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 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 2004-2006 State Health Plan [which is incorporated by reference in KRS 620.030]. (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) 584-0302 or e-mail (oini.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/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 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:

1. (a) During the index catheterization; or
(b) During the index hospitalization.

2. Death due to complication of the procedure including bleeding, vascular repair, transfusion reaction, or bypass surgery; or
3. 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 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) calendar days of any of the following events:

(a) Cerebrovascular accident, which includes 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; or
3. 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. 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 be 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 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;

(a) 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 cardiology services 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; and

(c) Maintain a collaborative 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 (angioplasty procedures performed by the provider) for 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-arterial 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 process.
The Division [Office] of Certificate of Need may discontinue the pilot program at a participating 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 assure 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 applicant seeking to increase the number of beds at a psychiatric residential treatment facility (PRTF) as permitted by KRS 161B.420 and 216B.456 if the application is submitted by an eight (8) bed or sixteen (16) bed PRTF-licensed and operating on July 13, 2004. The application shall be granted substantive 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 exclusion 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.

(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 for publication in the Kentucky Annual Magnetic Resonance Imaging Services Report. 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) A copy of the survey report and the certificate of need application for MRI units located at facilities which have not obtained or do not require a license to utilize such units.

(2) 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) N/A, 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 calendar year; and
(g) Estimate of number of scans to be performed during the next twelve (12) months.

(3) [a] The above information shall be provided by completion of "The Annual Survey of Magnetic Resonance Imaging Services Equipment Disclosure Report" (Form #12). A copy of this survey may be obtained by accessing the Office of Health Policy’s Web site at http://chfs.ky.gov/ohp/cone. 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.

(4) [b] Within thirty (30) days of an event (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.

(4) [c] Beginning January 1, 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 Equipment Disclosure Report.

(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) "Acquisition of a Health Facility, Notice of Intent to Acquire (Form #9)", 3/6/03;
(l) "Notice of Addition of a Health Service or Equipment", (Form #10) (5/15/99); and
(m) [6] "Application for Certificate of Compliance for a Continuing Care Retirement Community (CCRC)", (Form #11) (11/1/2000); and

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 the Chief Deputy Commissioner of Health, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

SHAWN CROUCH, Chief of Staff
MIKE BURNSIDE, Deputy Secretary
MARK D. BIRDWHISTELL, Secretary
APPROVED BY AGENCY: May 12, 2006
FILED WITH LRC: May 12 at noon
CONTACT PERSON: Jill Brown, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40601, phone (502) 564-7905, fax (502) 564-7573.

CABINET FOR HEALTH AND FAMILY SERVICES
Office of Inspector General
(As Amended at ARRS, June 13, 2006)


NECESSITY, FUNCTION, AND CONFORMITY: KRS 216B.042 and 216B.105 require the Kentucky Cabinet for Health and Family Services to regulate health facilities and services. KRS 216B.450(1) requires the secretary to promulgate administrative regulations prescribing standards for qualifications of personnel, quality of professional service, and personnel management operations. This administrative regulation establishes licensure requirements for the operation and services, and facility specifications of a community mental health [mental health] center.

Section 1. Definitions. (1) "Center" means a community mental health [mental health] center.
(2) "Clinical psychologist" means a clinical psychologist certified or licensed pursuant to KRS 319.050(7), 319.056(2), (4), or 319.064(5) [44].
(3) "Crisis stabilization unit" means a community-based facility operated by or under contract with a center to provide emergency services to no more than twelve (12) clients who require overnight stays.
(4) "Designated regional service area" means the geographical area to be served by the community mental health [mental health] center.
(5) "Licensed marriage and family therapist" means an individual licensed in accordance with KRS 335.300(3).
(6) "Licensed professional clinical counselor" means and individual licensed in accordance with KRS 335.500(3).
(7) [6] "Licensee" means the governing body legally responsible for the community mental health [mental health] center.
(8) [6] "Plan of care" means a written plan that delineates the services to be provided to a client, and includes the short- and long-term goals of the plan.
(9) [6] "Psychiatric nurse" means a registered nurse who:
(a) Has a master's degree in nursing with a specialty in psychiatric or mental health nursing;
(b) Is a graduate of a four (4) year educational program with a bachelor of science degree in nursing and a minimum of one (1) year of experience in a mental health setting;
(c) Is a graduate of a three (3) year educational program with two (2) years of experience in a mental health setting; or
(d) Is a graduate of a two (2) year educational program with an associate degree in nursing and three (3) years of experience in a mental health setting.
(10) [6] "Qualified social worker" means a social worker with a master's degree from an accredited school of social work who is licensed or exempt from licensure pursuant to KRS Chapter 335.
(11) [6] "Time out" means a treatment intervention that separates a client from others in a nonsecure area for a time-limited period to permit the client time to regain control over his behavior.

Section 2. Scope of Operation and Services. A community mental health [mental health] center shall provide a comprehensive range of accessible and coordinated mental health and mental health services, including direct or indirect mental health or mental health services, to the population of a designated regional service area, as required by KRS 210.370 to 210.480.

Section 3. Administration and Operation. (1) Licensee.
(a) The licensee shall be legally responsible for:
1. The center;
2. The establishment of administrative policy; and
3. Compliance with federal, state, and local law pertaining to the operation of the center.
(b) To obtain or renew a license to operate a center, the licensee shall comply with the requirements of this administrative regulation and the requirements of relevant statutes and administrative regulations.
(2) Executive director. The licensee shall designate an executive director, qualified by training and experience, who shall be responsible for:
(a) The total program of the center and its affiliates in accordance with the center's written policies; and
(b) Evaluation of the program as it relates to the client's needs.
(3) Policies. The licensee shall establish written policies for the administration and operation, including direct or indirect mental health or mental health services, to the population of the designated regional service area, as required by KRS 210.370 to 210.480.

(c) Client grievance procedure.
(d) Confidentiality and use of client records in accordance with federal, state, and local statutes and regulations.
(e) Personnel policy, including:
1. A job description and qualifications for each personnel category;
2. Wage scale, hours of work, vacation and sick leave;
3. A plan for orientation of personnel to the policies and objectives of the center and for on-the-job training, if necessary; and
(4) Client records. A client record shall be maintained for each individual receiving services.
(a) Each entry shall be current, dated, signed, and indexed according to the service received;
(b) A client record shall be retained for at least five (5) years or, in the case of a minor, three (3) years after the client reaches the age of majority, whichever is longer;
(c) Each client record shall be kept in a locked file and treated as confidential. Information contained in a client record shall:
1. Be disclosed to an authorized person; and
2. Not be disclosed to an unauthorized person;
(d) Each client record shall contain:
1. An identification sheet;
2. Information on the purpose for seeking a service;
3. A history of findings and treatments rendered;
4. Screening information pertaining to the problem;
5. Staff notes on services provided;
6. Pertinent medical, psychiatric and social information;
7. Disposition;
8. Assigned status;
9. Assigned therapists and
10. A termination study recapitulating findings and events during treatment, clinical impressions, and condition on termination.
(5) Personnel. A community mental health center shall employ the following full-time personnel:
(a) A program director who shall be a:
   a. Psychiatrist;
   b. Certified or licensed psychologist;
   c. Psychiatric nurse; or
   d. Licensed professional clinical counselor;
   e.Licensed marriage and family therapist; or
   f. Licensed social worker,
   2. The program director may be the executive director;
   (b) A board-certified or board-eligible psychiatrist who shall:
      a. Be responsible for treatment planning;
      b. Provide psychiatric service as indicated by client needs; and
      c. Supervise and coordinate the provision of psychiatric services by the center.
      2. This position may be filled by more than one (1) psychiatrist if the total hours worked are equivalent to one (1) full-time position;
      (c) A clinical psychologist who shall provide evaluation and screening services for the client and as well as individual or group therapy;
      (d) A licensed professional clinical counselor who shall provide evaluation and screening services for the client and as well as individual or group therapy;
      (e) A licensed marriage and family therapist who shall provide evaluation and screening services for the client and as well as individual or group therapy;
      (f) A psychiatric nurse who shall provide or supervise nursing service for psychiatric care;
      (g) A licensed social worker who shall provide social services as required;
      (h) A person who shall assure that client records are maintained and that information is immediately retrievable.

Section 4. Services. (1) The center shall provide services in the designated regional service area directly or through contract.
   (2) Direct services. The center shall provide a sufficiently wide range of treatment to meet client needs, including:
      a. Individual therapy;
      b. Family therapy;
      c. Group therapy;
      d. Play therapy;
      e. Behavior modification; and
      (f) Chemotherapy.
      (3) Plan of care.
      (a) Each client receiving direct treatment under the auspices of a community mental health center shall have an individual plan of care signed by a clinically licensed or certified professional provider of the treatment.
      (b) A medical service, including a change of medication, a diet restriction, or a restriction on physical activity shall be ordered by a physician or other ordering practitioner acting within the limits of his statutory scope of practice.
   (4) The center shall provide:
      (a) A therapeutic program for a person who requires less than twenty-four (24) hour a day care, and more than outpatient care (i.e., partial hospitalization or day care). A psychiatrist shall be present on a regularly scheduled basis to provide consultant service to staff;
      (b) Inpatient services through affiliation with a licensed community hospital for a person requiring full-time inpatient care. A center that does not have an affiliation contract in effect shall be considered to be in compliance with this requirement if the center documents a good faith effort to enter into an affiliation contract;
      (c) Inpatient services on a regularly scheduled basis with arrangements made for a nonscheduled visit during a time of increased stress or crisis. The outpatient service shall provide diagnosis and evaluation of a psychiatric problem and a referral to other services or agencies as indicated by the client's needs;
   (d) Emergency service for the immediate evaluation and care of a person in a crisis situation on a twenty-four (24) hour a day, seven (7) day a week basis. All components of the emergency service shall be coordinated into a unified program that enables a client receiving an emergency service to be readily transferred to another service of the center as client needs dictate; and
   (e) Consultation and education services for an individual and various community agencies and groups to increase the visibility, identifiability, and accessibility of the center and to promote mental health through the distribution of relevant mental health knowledge. The center shall have a utilization and review plan for the evaluation of the service needs of each client. The need for continuing a service element for each Individual shall be evaluated with sufficient frequency to ensure that proper arrangements have been made for discharge, for transfer to other elements of service, or referral to another service provider if appropriate.
   (6) Medications. A treatment involving medication or chemotherapy shall be administered under the direction of a licensed physician or other qualified practitioner, acting within the scope of his practice, and:
      (a) Medication or chemotherapy used in treatment shall be recorded in the staff notes on a special medications chart in the client record;
      (b) A copy of the prescription shall be kept in the client record;
      (c) Blood or another laboratory test or examination shall be performed in accordance with accepted medical practice on each individual receiving medication prescribed or administered by the center;
      (d) Drug supplies shall be stored under proper sanitary, temperature, light and moisture conditions;
      (e) Medication kept by the center shall be properly labeled;
      (f) A medication shall be stored in the original container unless transferred to a new container by a pharmacist or another person licensed to transfer the medication; and
      (g) Medication kept in the center shall be kept in a locked cabinet.

1. A controlled substance shall be kept under double lock (e.g., in a locked box in a locked cabinet).
2. There shall be a controlled substances record, in which is recorded:
   a. The name of the patient;
   b. The date, time, dosage, balance remaining and method of administration of each controlled substance;
   c. The name of the prescribing physician or other ordering practitioner acting within the limits of his statutory scope of practice;
   d. The name of the nurse who administered it, or staff who supervised such self-admission.
3. Except for medication to be self-administered in a crisis stabilization unit, access to the locked cabinet shall be restricted to a designated medication nurse. Medication to be self-administered in a crisis stabilization unit shall be made available to the patient at the time of administration.

Section 5. Crisis Stabilization. (1) Emergency services provided in a crisis stabilization unit shall include the following:
   (a) A mental status evaluation and physical health questionnaire of the client upon admission;
   (b) A treatment planning process;
   (c) Procedure for crisis intervention; and
   (d) Discharge and aftercare planning processes.
   (2) A program shall have a written policy concerning the operation of a crisis stabilization unit including:
      (a) Staffing.
      1. At least one (1) direct-care staff member shall be assigned direct-care responsibility for:
         a. Every four (4) clients during normal waking hours; and
         b. Every six (6) clients during normal sleeping hours.
      2. Administrative oversight of the program shall be provided by a staff member who shall be:
a. A person licensed or certified to provide mental health services independent of clinical supervision;

b. A qualified mental health professional as defined in KRS 202A.011(12); or
c. A person qualified to be program director under Section 3(5)(a) of this administrative regulation.

3. The center shall provide a training program for direct care staff pertaining to the care of a client in a crisis stabilization unit.

(b) Criteria to assure that each client in a crisis stabilization program shall be:

1. In either one (1) of two (2) separate programs, child or adult, separated by physical location. A children's program may serve a resident up to age twenty-one (21) if it is more developmentally appropriate for the children. The program shall be provided in a setting which is appropriate for the children.

2. In need of short-term behavior management and at risk of placement in a higher level of care;

3. Able to take care of his own personal needs, if an adult;

4. Medically able to participate in services; and

5. Served in the least restrictive environment available in the community.

(c) Referrals for physical health services to include diagnosis, treatment, and consultation for acute or chronic illnesses occurring during the client's stay in the crisis stabilization unit or for problems identified during the admission assessment.

(d) Rights of a crisis stabilization client, to include:

1. A description of the client's rights and the means by which these rights are protected and exercised.

2. At the point of admission, the program shall provide the client or his personal representative, if he is a child, his guardian, or other legal representative, with a clearly written and readable statement of rights and responsibilities. The statement shall be read to the client and his parents, if he is a child, his guardian, or other legal representative if either cannot read and shall cover:

   a. The right to treatment, regardless of race, religion, or ethnicity;

   b. The right to recognition and respect of personal dignity in the provision of all treatment and care;

   c. The right to be provided treatment and care in the least restrictive environment possible;

   d. The right to an individualized plan of care;

   e. The right of the client and his parents, if he is a child, his guardian, or other legal representative, to participate in treatment planning;

   f. The nature of care, procedures, and treatment that he shall receive;

   g. The risks, side effects, and benefits of all medications and treatment procedures used; and

   h. The right, to the extent permitted by law, to refuse the specific medications or treatment procedures and the responsibility of the facility if [when] the client refuses treatment, to seek appropriate legal alternatives or orders of involuntary treatment, or, in accordance with professional standards, to terminate the relationship with the client upon reasonable notice.

3. The rights of clients shall be written in language which is understandable to the client, and his parents, if he is a child, his guardian or other legal representative, and shall be posted in appropriate areas of the facility.

4. The policy and procedure concerning the clients' rights shall assure and protect the client's personal privacy within the constraints of his plan of care. These rights to privacy shall include:

   a. Visitation by family or significant others in a suitable area of the facility; and

   b. Telephone communications with family or significant others at a reasonable frequency.

5. If a privacy right is limited, the client and his parents, if he is a child, or his guardian or other legal representative, shall receive a full explanation. A limitation to a privacy right shall be documented in the client's record.

6. The client and his parents, if he is a child, his guardian, or other legal representative, shall be informed of the use and disposition of a product of special observation and audio visual techniques such as:

   a. One (1) way vision mirror;

   b. Audio recording;

   c. Video tape recording;

   d. Television;

   e. Movie; or

   f. Photograph.

7. Written policy and procedure developed in consultation with professional and direct-care staff shall provide for behavior management of a client, including the use of a time-out room. The policy and procedure for use of a time-out room shall be approved by the Department for Mental Health and Mental Retardation. Behavior management techniques shall be explained fully to each client and his parents, or his guardian or other legal representative.

8. The facility shall prohibit cruel and unusual behavioral management measures, including corporal punishment, the use of a seclusion room, and mechanical restraint as defined in 902 KAR 20-320 [905 KAR 4-000].

9. Written policy shall prohibit a client from administering a disciplinary measure upon another client and shall prohibit a person other than professional or direct-care staff from administering a disciplinary measure to a child client.

(g) The use of therapeutic holds as a safe behavioral management technique. The policy shall describe:

1. Criteria for appropriate use of therapeutic holds;

2. Documentation requirements; and

3. The requirement for completion of a training course approved by the Department of Mental Health and Mental Retardation, prior to using therapeutic holds.

(i) The requirement that a licensed psychiatrist shall be available to evaluate, provide treatment and participate in treatment planning on a regular basis.

(j) The procedure for proper management of pharmaceuticals, consistent with the requirements of Section 4(6) of this administrative regulation.

(h) Except for a program accredited by the Joint Commission for Accreditation of Health Organizations or the Commission on Accreditation of Rehabilitation Facilities, general procedures that address the following:

1. Procedures to be followed by staff in the event of a medical emergency of a client;

2. Proper nutrition;

3. Emergency preparedness;

4. Security; and

5. School attendance for children.

(3) Facility requirements for a crisis stabilization unit.

(a) A living unit shall be located within a single building and shall include:

1. Bedrooms.

   a. [Ne] More than four (4) clients shall not sleep in a bedroom.

   b. A bedroom shall be equipped with a bed for each client.

2. Bathrooms. Each living unit shall have at least one (1) wash basin with hot and cold water, one (1) flush toilet, and one (1) bath or shower with hot and cold water for every eight (8) resident clients. If separate toilet and bathing facilities are not provided, males and females shall not be permitted to use those facilities at the same time.

3. Living area.

   a. The living area shall provide comfortable seating for all cli-
ents housed within the living unit.

b. Each living unit shall be equipped with a working sink, stove and refrigerator, unless a kitchen is directly available within the same building as the living unit.

c. A living unit shall house a maximum of twelve (12) clients.

Section 6. Facility Specifications. (1) A facility housing a community mental health [mental retardation] center or a crisis stabilization unit shall be a general purpose building [buildings] of safe and substantial construction and shall be in compliance with applicable state and local laws relating to zoning, construction, plumbing, safety, and sanitation. The following shall apply if relevant and as adopted by the respective agency authority:

(a) Requirements for fire safety pursuant to 815 KAR 10:060 [46-060]; and

(b) Requirements for making a building or facility accessible to and usable by an individual with disabilities, pursuant to KRS 198B.260 and administrative regulations promulgated thereunder.

(2) Prior to occupancy, the facility shall have final approval from appropriate agencies.

(3) A facility shall be currently approved by the Department of Housing, Buildings and Construction in accordance with 815 KAR 10:060 [46-060], before relicensure is granted by the licensure agency.

ROBERT BENVENUTI, Inspector General
MARK D. BIRDWHISTELL, Secretary
APPROVED BY AGENCY: March 29, 2006
FILED WITH LFC: March 29, 2006 at 11 a.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.

CABINET FOR HEALTH AND FAMILY SERVICES
Office of the Inspector General
Division of Fraud, Waste, and Abuse, Identification and Prevention
(As Amended at ARRS, June 13, 2006)


RELATES TO: KRS 218A.202
STATUTORY AUTHORITY: KRS 198B.260 [46-060]; 198A.050, [244.000]; 218A.202, [188.240]; 218A.250
NECESSITY, FUNCTION, AND CONFORMITY: KRS 218A.202 directs the Cabinet for Health and Family Services to establish an electronic system for monitoring Schedule II, III, IV, and V controlled substances that are dispensed in the Commonwealth. A practitioner or pharmacy, intended to be used by the Commonwealth by a pharmacy that has obtained authorization to operate from the Kentucky Board of Pharmacy. The purposes of the [system is designed to enhance a practitioner's or pharmacist's ability to prescribe or dispense] [improve access to] [controlled substances for legitimate medical needs by providing a record] [allowing a practitioner or a pharmacist to obtain a patient’s pharmaceutical history related to controlled substances for purposes of monitoring and intervening. Also, the system will enable regulatory and law enforcement agencies to more efficiently investigate illegal use of controlled substances and identify [address] [violations of KRS Chapter 241A]. The purpose of this administrative regulation is to establish [the] criteria for reporting prescription data, [for] providing reports to authorized persons, and [for] a waiver for a dispenser who does not have an automated recordkeeping system.


(2) "Dispenser" means by KRS 218 A.060 [46-060]; means a person registered to dispense controlled substances by the U.S. Drug Enforcement Administration.

(3) "KASPER" means Kentucky All-Schedule Prescription Electronic Reporting System.

(4) "Patient identifier" means a patient's:

(a) Full name;

(b) Address, including zip code;

(c) Date of birth; and

(d) Social Security number or an alternative identification number established pursuant to Section 5 of this administrative regulation.

(5) [9] "Pharmacy Universal Claim Form" means a form that:

(a) Is in the format of the "Pharmacy Universal Claim Form" incorporated by reference in Section 6 of this administrative regulation; and

(b) Contains the information specified by Section 2(2) of this administrative regulation.


Section 2. Data Reporting. (1) A dispenser shall report all dispensed controlled substances, except during the circumstances specified in KRS 218A.202(3)(a) and (b) [dispensed after December 31, 1998].

(a) A dispenser of a Schedule II, III, IV, or V controlled substance shall transmit or provide the following data to the cabinet or the cabinet's agent:

(i) Patient identifier;

(ii) National drug code of the drug dispensed;

(iii) Metric quantity of drug dispensed;

(iv) Date of dispensing;

(v) Estimated days supply dispensed;

(vi) Drug Enforcement Administration registration number of the prescriber;

(vii) Serial number assigned by the dispenser; and

(viii) The Drug Enforcement Administration registration number of the dispenser.

(2) The data identified in subsection (2) of this section shall be transmitted within thirty (30) days of dispensing unless the cabinet grants an extension.

(3) [21] An extension may be granted if:

1. [21] The [a] dispenser suffers a mechanical or electronic failure;

or

2. [19] The dispenser cannot meet the deadline established by subsection (3) of this section because of [paragraph (a) of this subsection for other reasons beyond his control.

(b) A dispenser shall apply to the branch in writing for an extension listed in paragraph (a) of this subsection within twenty-four (24) hours of discovery of the circumstances necessitating the request or on the next business day.

(4) [26] Except as provided in subsection (9) [(7)] of this section, the data shall be transmitted by:

(a) An electronic device compatible with the receiving device of the cabinet or the cabinet's agent;

(b) Double sided, high density micro floppy disk; [or]

(c) One-half (1/2) inch nine (9) track 1600 or 6250 BPI magnetic tape; [or]

(d) Secure File Transfer Protocol; [or]

(e) https protocol; [or]

(f) CD/DVD; or

(g) Secure Virtual Private Network connection.

(7) [58] The data shall be transmitted in the format established by the "ASAP Telecommunications Format for Controlled Substances", American Society for Automation in Pharmacy, May 1995, or a comparable format approved by the branch.

(8) [63] The branch shall provide a toll-free telephone number for transmitting electronic reports by modem.

(9) [(7)] A dispenser, who does not have an automated recordkeeping system capable of producing an electronic report in the format established by "ASAP Telecommunications Format for
Controlled Substances*, may be granted a waiver from the electronic reporting requirement if the dissector:

(a) Makes a written request to the branch within twenty-four (24) hours of discovery and of the circumstances necessitating the request, or on the next date that state offices are open for business following the discovery; [may request a waiver from electronic reporting. The request shall be made to the cabinet in writing.]

(b) Agrees [A dissector shall be granted a waiver, if he] in writing to immediately begin reporting [report the data by submitting a completed "Pharmacy Universal Claim Form" or comparable document approved in writing by the branch.]

Section 3. Compliance. ([1][4]) A dissector shall be deemed to be the person who is registered with the U.S. Drug Enforcement Administration. ([2]) A dissector may presume that the patient identification information established in Section 5 of this administrative regulation and provided by the patient or the patient's agent is correct.

Section 4. Request for Report. (1) A written or electronic request shall be filed with the cabinet prior to the release of a report, except for a subpoena issued by a grand jury or an appropriate court order issued by a court of competent jurisdiction.

(a) A request for a KASPER report shall be made electronically at [http://chfs.ky.gov/oip/kasper].

(b) A request for a KASPER report shall be made by written application on one (1) of the following forms:

(a) For law enforcement, on the "Request for Law Enforcement KASPER Report", Form DCB-15L;

(b) For judiciary, on the "Request for KASPER Report (Court)", Form DCB-15J; or

(c) For pharmacy, on the "Request for KASPER Report", Form DCB-15P [on Request for KASPER Report Form DCB-15P on the Web site designated by the cabinet—except for a subpoena issued by a grand jury or an appropriate court order issued by a court of competent jurisdiction].

Section 5. [Alternative] Patient Identification Number. (1) A patient or the person obtaining the controlled substance on behalf of the patient shall disclose to the dissector the patient's Social Security number for purposes of the dissector's mandatory reporting to KASPER.

(a) A patient does not have a Social Security number, or refuses to provide a Social Security number, the patient's driver's license number shall be disclosed [used].

(b) A patient has not been assigned a Social Security number or a driver's license number, the number 000-00-0000 shall be used.

(c) The number 999-99-9999 shall be used if a patient or a patient's agent refuses to provide a Social Security number or driver's license number.

(d) If a patient is a child who does not have a Social Security number or a driver's license number, the Social Security number, driver's license number, or the number 000-00-0000, as applicable, of the parent or guardian shall be used.

(e) If a patient is an animal, the owner's Social Security number, driver's license number, or the number 000-00-0000, as applicable, shall be used.

(f) If a patient's Social Security number is not available, the Social Security number or driver's license number, or the number 999-99-9999, as applicable, of the person obtaining the controlled substance on behalf of the patient shall be used.

(g) If the patient or the patient's agent refuses to provide a Social Security number or driver's license, the number 999-99-9999 shall be used.

Section 6. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) *ASAP Telecommunications Format for Controlled Substances*, American Society for Automation In Pharmacy, May, 1995;

(b) "Pharmacy Universal Claim Form"; [and]

(c) "Request for Law Enforcement KASPER Report", Form DCB-15L.

Section 7. Request for KASPER Report (Court). Form DCB-15J.

(c) Request for KASPER Report (Court), Form DCB-15J, 5/06.

(d) Request for KASPER Report (Court), Form DCB-15J, 5/06.

(e) Request for KASPER Report, Form DCB-15P, 5/06.

Section 8. This material may be inspected, copied, or obtained, subject to applicable copyright laws, by the Drug Enforcement and Professional Practice Branch, Office of the Inspector General, Cabinet for Health and Family Services, [Department for Public Health], 275 E. Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m. and may be viewed online at [http://chfs.ky.gov/oip/KASPER.htm].

Section 9. Robert J. Benvenuti, III, Esq., Inspector General, Mark D. Birdwhistle, Secretary

APPROVED BY AGENCY: March 14, 2006
FILED WITH LRC: March 15, 2006 at noon
CONTACT PERSON: Jill Brown, Office of Legal Services, 275 East Main Street S W B, Frankfort, Kentucky 40601, phone (502) 554-7905, fax (502) 554-7573.

Section 10. Cabinet for Health and Family Services
Office of Inspector General
(As Amended at ARRS, June 13, 2003)

900 KAR 1:110. Critical access hospital services.

RELATES TO: KRS 205.639, 211.842 - 211.852, 216.379, 216.380, [216.381], 216.382, 216.383, 216.010, 216.015, 216.040, 216.042, 216.045, 216.055, 216.075, 216.105, 216.115, 216.111, 311, 315, 332-[446]-1311, 42 C.F.R. 485.901-920.4 F.R. 495.541, 531.600-311(a), 311(c), 42 C.F.R. 485.618(d)

STATUTORY AUTHORITY: KRS 216.380(14), (14)(4)

216.040(a), 216.042(1)(a), (c), 42 U.S.C. 1395-4
NECESSITY, FUNCTION, AND CONFORMITY: KRS 216.380(14)(4)(4)

Requires the Cabinet for Health and Family Services to promulgate administrative regulations necessary to implement the program for licensure of critical access hospitals. This administrative regulation establishes quality of care and licensure standards for critical access hospitals.

Section 11. Definitions. ([1][4]) "Cabinet" is defined by KRS 216.015(5) [means the Cabinet for Health and Family Services].

(a) "Licensee" means the entity that has been issued and holds a valid critical access hospital license from the Cabinet for Health and Family Services [a general acute-care hospital licensed as a critical access hospital].

Section 2. Requirements for Critical Access Status. (1) An applicant for initial licensure of a critical access hospital shall provide documentation to the cabinet verifying that:

(a) The requirements of KRS 216.380(3) or (4) have been met;

(b) The hospital qualifies for state designation under 42 U.S.C. Section 1395-4(d)(12) and;

(c) The requirements of this administrative regulation have been met.

(2) A critical access hospital that was certified by the secretary of the cabinet as a necessary provider of services prior to January 1, 2006 may be reclassified as a critical access hospital, provided the requirements of this administrative regulation are met. [in order to be reclassified as a critical access hospital, a general acute-care hospital shall meet the requirements established in KRS 216.380(3)].

(3) If an application for initial licensure of a critical access hospital is denied by the cabinet, the applicant shall be entitled to an administrative hearing pursuant to KRS Chapter 132. Licensee hearings shall follow the procedures in 300 KAR 6:040. If the cabinet certifies a hospital as a necessary provider pursuant to KRS 216.380(3)(a)(3), the hospital shall meet one (1) of the following criteria:

(a) Be located in a county where the percentage of the population with income less than 200 percent of poverty is greater than the state average, based on data published by the UK Center for...
Rural Health in the document titled "Good Samaritan Report 1997—A County-Based Atlas of Health and Social Data for All Kentucky", available online at the following internet-address:
http://www.mrc.uky.edu/ruralhealth/Goodsam.htm

(b) Be located in a county that has an unemployment rate higher than the state average—unemployment rate, based on data published by the Cabinet for Health Services, Department for Public Health, in the report titled "Good Samaritan Report 1997—A County-Based Atlas of Health and Social Data for All Kentucky", available online at the following internet-address:
http://publichealth.state.ky.us/ndh.ky---county----health---profile--1997.htm

(c) Be located in a county with a greater number of people age sixty-four (64) or older than the state average, based on data published by the UK Center for Rural Health in the document titled "Good Samaritan Report 1997—A County-Based Atlas of Health and Social Data for All Kentucky", available online at the following internet-address:
http://www.mrc.uky.edu/ruralhealth/Goodsam.htm

(d) Treat on average a higher than state average percentage of Medicare patients, based on data published by the Cabinet for Health Services, Department for Public Health in the report titled "1999 Hospital Utilization Services Report", available online at the following internet-address:
http://172.36.45.0/hospital utilization service rep 99.htm; or

(e) Treat on average a higher than state average percentage of Medicaid patients, based on data published by the Cabinet for Health Services, Department for Public Health in the report titled "1999 Hospital Utilization Services Report", available online at the following internet-address:
http://172.36.45.0/hospital utilization service rep 99.htm

(3) A general acute care hospital applying to be relicensed as a critical access hospital shall supply documentation that the requirements established in KRS 216.380(3)(a) or 216.380(4) are met.

(4) If denial of the relicensing of a general acute care hospital as a critical access hospital is appealed, it shall be appealed pursuant to the provisions of KRS Chapter 148.

Section 3. Administration and Operation. (1) The licensee shall be legally responsible for the operation of the critical access hospital and for compliance with federal, state, and local law pertaining to the operation of the critical access hospital.

(2) A critical access hospital shall be under the medical direction of a physician licensed to practice medicine in Kentucky.

(3) The licensee shall:
(a) Establish written policies and lines of authority; and
(b) Designate the person principally responsible for the daily operation of the critical access hospital.

(4) The licensee shall develop [e] patient care policies [policy] with the advice of a group of professional persons, as identified by the licensee;
(a) The group of professional persons shall include:
   1. One (1) or more physicians licensed in the Commonwealth of Kentucky; and
   2. One (1) or more persons who are not members of the staff.
(b) The patient care policies [policy] shall include:
   1. A description of the critical access hospital shall provide directly or through contractual agreement;
   2. A written program narrative describing in detail the:
      a. Services to be offered;
      b. Methods and protocols for service delivery;
      c. Qualifications of personnel to be involved in the delivery of services; and
      d. Outcomes expected to be attained [reached] through the delivery of specified services;[ ]
   3. Guidelines for medical case management of health problems which include:
      a. Criteria for determining if a case requires medical consultation;
      b. Patient referral procedures; and
      c. Maintenance of health records;[ ]
   4. Procedures for the proper storage, handling and administration of drugs and biologics; and
   5. Procedures establishing [the] annual review and evaluation of services provided.

(5) A critical access hospital shall establish [a] written policies [policy] regarding patient rights and responsibilities. The policies [policy] shall assure that each patient is:
(a) Informed of:
   1. Patient rights;
   2. Rules and regulations governing patient conduct and responsibilities; and
   3. The procedure for handling a patient grievance;
(b) Informed of services available and related charges, including charges not covered by Medicare, Medicaid, or other third-party payor;
(c) Informed of:
   1. Medical condition, unless medically contraindicated as documented in the patient's [the] medical record;
   2. Right to participate in planning his [her] medical treatment; and
   3. Right to refuse to participate in experimental research;
(d) Assisted in understanding his [her] patient rights;
(e) Provided confidential treatment of his [her] records and given the opportunity to approve or refuse their release to an individual not involved in his [her] care, except as required by Kentucky law or third-party payment contract;
(f) Treated with consideration, respect, and recognition of the patient's [the] dignity and individuality, including privacy in treatment and care of personal health needs; and
(g) Informed of the procedure for filing a grievance or a recommendation to change a policy or services. The policy shall establish a time frame within which critical access hospital personnel shall determine what corrective action to take.

(6) Personnel.
(a) Staffing shall be in accordance with KRS 216.380(9)(e).
(b) A physician shall:
   1. Be responsible for all medical aspects of the critical access hospital;
   2. Provide direct medical services in accordance with KRS Chapter 311;
   3. Be present to provide medical direction, supervision, and consultation to the staff at least once in every two (2) week period, unless no patient has been treated since the last visit;
   4. Participate with other medical personnel in developing, executing, and periodically reviewing written policies and services;
   5. Review and sign patient records during the site visit; and
   6. Provide medical orders and medical care services to patients in accordance with the critical access hospital protocols.
(c) A registered nurse or licensed practical nurse shall be on duty if a patient has been admitted for overnight stay [an in-patient is present].

(7) The critical access hospital shall have transfer and linkage contracts that meet the requirements of KRS 216.380(11) and (12)(e) and (9)(e).

(8) Medical records.
(a) A critical access hospital shall maintain medical records. A medical record shall contain at least the following:
   1. The names of the patient's immediate family members;
   2. Medical and social history, including data obtainable from other providers;
   3. Description of each medical visit or contact, including:
      a. Condition or reason necessitating visit or contact;
      b. Assessment;
      c. Diagnosis;
      d. Services provided;
      e. Medications and treatments prescribed; and
      f. Disposition made;
   4. Reports of laboratory, x-ray, and other test findings; and
   5. Documentation of referrals made, including:
      a. Reason for referral;
      b. To whom patient was referred; and
      c. Information obtained from referral source.
(b) Confidentiality of individual patient records shall be maintained at all times.
(c) Transfer of records. The critical access hospital shall establish systematic procedures to assist in continuity of care in the event the patient moves to another source of care, and shall, upon proper release, transfer medical records or an abstract upon request.
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(d) Retention of records. After a patient's death or discharge, the completed medical record shall be placed in an inactive file and retained for five (5) years or, if the patient is [in case of a minor, three (3)] years after the patient reaches the age of majority under state law, whichever is the longest.

(3) Utilization review and medical audit. In order to determine the appropriateness of services rendered, there shall be a written plan for utilization review which specifies the frequency of reviews and composition of the body conducting the review.

(10) Quality assessment and performance improvement program.

(a) A critical access hospital shall have a program, in accordance with KRS 216.380(10)(b)(10), to ensure continuous and effective mechanisms for:

1. Review and evaluation of patient care; and
2. Corrective action.

(b) The program shall be approved by the licensee.

(c) The program shall:

1. Establish responsibility for monitoring and evaluation of services;
2. Delineate the scope of care,
3. Identify specific aspects of care to be provided;
4. Establish and document clinical criteria used to monitor care and services;
5. Systematically evaluate the standard of care to identify problems and recommend corrective action or alternatives to improve the standard of care;
6. Establish methods to assess the effectiveness of corrective action taken to improve care; and
7. Require documentation of improvements in the standard of care, subsequent to corrective action taken.

(11) Contracted services. The critical access hospital shall assure that a service provided under contract is properly licensed or certified in accordance with applicable local, state, and federal regulations and statutes.

Section 4. Provision of Services. (1) A critical access hospital shall provide the services [established] in accordance with KRS 216.380(2)(a).

(2)(a) A critical access hospital shall provide, either directly or through contract, basic laboratory services essential to the immediate diagnosis and treatment of the patient [on a twenty-four (24) hour basis].

(b) If the critical access hospital provides laboratory services directly, the service shall be in compliance with 902 KAR 20:016, Section 4(4).

(c) If the critical access hospital contracts for laboratory services, the laboratory it contracts with shall be in compliance with KRS Chapter 333.

(d) The following services shall be provided:

1. Chemical examination of urine, including ketone measurement, by stick or tablet method, or both;
2. Microscopic examination of urine sediment;
3. Hemoglobin or hematocrit;
4. Blood sugar;
5. [Gram-stains]
6. Examination of stool specimens for occult blood;
7. [7] Pregnancy tests; and
7. [8] Primary culture for meningitis to a hospital laboratory or licensed laboratory; and
9. [Test for pinworms].

(3) A critical access hospital shall provide medical emergency procedures as a first response to common life-threatening injuries and acute illness, and shall have available the drugs and biologicals commonly used in life-saving procedures, such as analgesics, local anesthetics, antibiotics, anticonvulsants, antitoxins and emetics, sera and toxoids.

(a) Examination services shall be provided by the critical access hospital in accordance with 902 KAR 20:012.

(b) There shall be a physician, nurse practitioner, or physician assistant with training or experience in emergency care on-call and immediately available by telephone or radio contact, and available on site within thirty (30) minutes on a twenty-four (24) hour per-day basis.

(c) A registered nurse shall be on duty at the hospital to provide immediate emergency care on a twenty-four (24) hour per day basis.

(d) Emergency services shall be provided in accordance with KRS 216.380(4)(a)(4)(4).

(4) In accordance with KRS 216.380(5)(4)(5), a critical access hospital shall provide, either directly or through contract, basic pharmacy services essential to the treatment of the patient [on a twenty-four (24) hour basis].

(a) If the critical access hospital provides pharmacy services directly, it shall be in compliance with 902 KAR 20:016, Section 4(6).

(b) If the critical access hospital contracts for pharmacy services, the pharmacy it contracts with shall be in compliance with KRS Chapter 315.

(5) In accordance with KRS 216.380(5)(4)(5), a critical access hospital shall provide, either directly or through contract, basic radiology services essential to the immediate diagnosis and treatment of the patient [on a twenty-four (24) hour basis].

(a) If the critical access hospital provides radiology services directly, it shall be in compliance with 902 KAR 20:016, Section 4(6).

(b) If the critical access hospital contracts for radiology services, the radiology service it contracts with shall have a current license or registration pursuant to KRS 211.842 to 211.852 [and applicable administrative regulations].

(6) Pursuant to KRS 216.380(4)(4)(b), dietary services shall be provided either directly or by contract, in accordance with 902 KAR 20:016, Section 4(3). If a patient is admitted to the critical access hospital and remains [an inpatient in the critical access hospital] for more than twelve (12) hours.

(7) A critical access hospital that has established a psychiatric unit in accordance with KRS 216.380(7)(a), shall be in compliance with 902 KAR 20:180.

(8) A critical access hospital that has established a rehabilitation unit in accordance with KRS 216.380(7)(b), shall be in compliance with 902 KAR 20:240.

Section 5. Physical and Sanitary Environment. A critical access hospital shall comply with the provisions of 902 KAR 20:016, Section 3(10).

Section 6. Facility Requirements. A critical access hospital shall comply with the requirements of 902 KAR 20:009 related to the services offered.

[Section 7. Incorporation by Reference. (7) The following material is incorporated by reference:

(a) Form L&R 242, Application for Initial License to Operate a Critical Access Hospital (CAH), June 2000 edition; and
(b) Form L&R 242A, Application for Reissue or to Operate a Critical Access Hospital (CAH), June 2000 edition.

(2) The material may be inspected, copied, or obtained, subject to applicable copyright law, at the office of the Inspector General, Division of Licensing and Regulation, 275 East Main Street, Fourth Floor, East, Frankfort, Kentucky 40621, Monday through Friday, 8:30 to 4:30 p.m.]

ROBERT J. BENVENUTI, III, Esq., Inspector General
MARK D. BIRDWHISTELL, Secretary
APPROVED BY AGENCY: April 9, 2006
FILED WITH LRC: April 9, 2006 at 8 a.m.
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CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Division of Administration and Financial Management
(As Amended at ARRS, June 13, 2006)

907 KAR 1:019. Outpatient Pharmacy Program.

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RELATES TO: KRS Chapter 138, 205.510, 205.560, 205.561, 205.5631-205.5639, 205.564, 205.6316, 205.6851, 217.015, 217.822, 42 C.F.R. 430.10, 431.54, 440.120, 447.331, 447.332, 447.333, 447.334, 42 U.S.C. 1396a, 1396b, 1396c, 1396d, 1396r-8, Pub.L. 109-91

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(2), 205.561, 205.563, 205.564, 205.5639(2), 205.564(10). (13.)

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services, has the responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky’s indigent citizens. KRS 205.560 provides that the scope of medical care for which Medicaid shall pay is determined by administrative regulations promulgated by the cabinet. This administration establishes the provisions for coverage of drugs through the Medicaid Outpatient Pharmacy Program including the establishment of prior authorization procedures as authorized by KRS 205.5332 and Pharmacy and Therapeutics Advisory Committee provisions as authorized by KRS 205.564.

Section 1. Definitions. (1) "Brand name drug" means the registered trade name of a drug which was originally marketed under an original new drug application approved by the Food and Drug Administration. (2) "Commissioner" is defined by KRS 205.5631(1). (3) "Covered drug" means a drug for which the Department for Medicaid Services provides reimbursement if medically necessary and if provided, but not otherwise excluded, in accordance with Sections 2 and 3 of this administrative regulation. (4) "Department" means the Department for Medicaid Services or its designated agent. (5) "Department’s Internet web site" or "web site" means the Internet web site maintained by the Department for Medicaid Services and accessible at http://www.chfs.ky.gov/dms. (6) "Dosage form" means the type of physical formulation used to deliver a drug to the intended site of action, including a tablet, an extended release tablet, a capsule, an elixir, a solution, a powder, a spray, a cream, an ointment, or any other distinct physical formulation recognized as a dosage form by the Food and Drug Administration. (7) "Drug list" means the Department for Medicaid Services’ list which: (a) Specifies: 1. Drugs, drug categories, and related items not covered by the department; and 2. Covered drugs requiring prior authorization or having special prescribing or dispensing restrictions or excluded medical uses; and (b) May include information about other drugs, drug categories, or related items and dispensing and prescribing information. (8) "Drug Management Review Advisory Board" or "DMRAB" or "board" means the board established pursuant to KRS 205.5636. (9) "Effective" or "effectiveness" means a finding that a pharmaceutical agent does or does not have a significant, clinically-meaningful therapeutic advantage in terms of safety, usefulness, or clinical outcome over the other pharmaceutical agents based on pertinent information from a variety of sources determined by the department to be relevant and reliable. (10) "Food and Drug Administration" means the Food and Drug Administration of the United States Department of Health and Human Services. (11) "Generic drug" or "generic form of a brand name drug" means a drug which contains identical amounts of the same active drug ingredients in the same dosage form and which meets official compounded or other applicable standards of strength, quality, purity, and identity in comparison with the brand name drug. (12) "Legend drug" means a drug so defined by the Food and Drug Administration and required to bear the statement: "Caution: Federal law prohibits dispensing without prescription". (13) "Manufacturer" is defined in 42 U.S.C. 1396r-6(k)(5). (14) "Medically necessary" or "medical necessity" means that a covered benefit is determined to be needed in accordance with 907 KAR 3:130. (15) "Member" means a recipient as defined in KRS 205.8451; (16) "Official compendia" or "compendia" is defined in 42 U.S.C. 1396r-8(a)(1)(B)(i). (17) "Over-the-counter drug" or "OTC drug" means a drug approved by the Food and Drug Administration to be sold without bearing the statement "Caution: Federal law prohibits dispensing without prescription". (18) "Prescriber" means a health care professional who, within the scope of practice under Kentucky licensing laws, has the legal authority to write or order a prescription for the drug that is ordered. (19) "Recipient" is defined by KRS 205.8451(9). (20) "Roop reject" means an individual eligible for and participating in a medical assistance program in the Department for Medicaid Services. (21) "Secretaries" means the Secretary of the Cabinet for Health and Family Services.

Section 2. Covered Benefits and Drug List. (1) A drug covered through the Outpatient Pharmacy Program shall be: (a) Medically necessary; (b) Approved by the Food and Drug Administration; and (c) Prescribed for an indication that has been approved by the Food and Drug Administration or for which there is documentation in official compendia or peer-reviewed medical literature supporting its medical use. (2) The department shall have a drug list which: (a) Lists: 1. Drugs, drug categories, and related items not covered by the department and, if applicable, excluded medical uses for covered drugs; and 2. Maintenance drugs covered by the department; (b) Specifies those covered drugs requiring prior authorization or having special prescribing or dispensing restrictions; (c) Specifies those covered drugs for which the maximum quantity limit on dispensing may be exceeded; (d) Lists covered over-the-counter drugs; (e) Specifies those legend drugs which are permissible restrictions under 42 U.S.C. 1396r-6(d), but for which the department makes reimbursement; (f) Specifies covered vaccines; (g) May include a preferred drug list of selected drugs which have a more favorable cost to the department and which prescribers are encouraged to prescribe, if medically appropriate; (h) May be updated monthly or more frequently by the department, and (i) Shall be posted on the department’s Internet web site. (3) The department may implement drug treatment protocols requiring the use of medically-appropriate drugs which are available without prior authorization before the use of drugs which require prior authorization. The department may approve a request from the prescriber or a pharmacist for exemption of a specific recipient [member] [recipient] from this requirement based on documentation that drugs available without prior authorization: (a) Were used and were not an effective medical treatment or lost their effectiveness; (b) Are reasonably expected to not be an effective medical treatment; (c) Resulted in, or are reasonably expected to result in, a clinically-significant adverse reaction or drug interaction; or (d) Are medically contraindicated.

Section 3. Exclusions and Limitations. (1) The following drugs shall be excluded from coverage: (a) A drug which the Food and Drug Administration considers...
to be:

1. A less-than-effective drug; or
2. Identical, related, or similar to a less-than-effective drug;

(b) A drug or its medical use in one (1) of the following categories unless the drug or its medical use is designated as covered in the drug list:

1. A drug if used for anoxia, weight loss, or weight gain;
2. A drug if used to promote fertility;
3. A drug if used for cosmetic purposes or for hair growth;
4. A drug if used for the symptomatic relief of cough and colds;
5. A drug if used to promote smoking cessation;
6. Vitamin or mineral products other than prenatal vitamins and fluoride preparations;

7. An over-the-counter drug provided to a Medicaid nursing facility service recipient [member] [recipient]. An over-the-counter drug provided to a Medicaid nursing facility service recipient [member] [recipient] shall be considered a routine service which is already included in a nursing facility's reimbursement and shall be excluded from coverage via the Medicaid Outpatient Pharmacy Program;
8. A barbiturate;
9. A benzodiazepine;
10. A drug which the manufacturer seeks to require as a condition of sale that associated tests or monitoring services be purchased exclusively from the manufacturer or its designee; or
11. A drug utilized for erectile dysfunction therapy unless the drug is used to treat a condition, other than sexual or erectile dysfunction, for which the drug has been approved by the United States Food and Drug Administration;

(c) A drug for which the manufacturer has not entered into or complied with a rebate agreement in accordance with 42 U.S.C. 1396r-8(a), unless there has been a review and determination by the department that it is in the best interest of a recipient [member] [recipient] for the department to make payment for the drug and federal financial participation is available for the drug;

(d) Except in accordance with subsection (2) [46] of this section, a drug dispensed as part of, or incident to, and in the same setting as, an inpatient hospital service, an outpatient hospital service, or an ambulatory surgical center service;

(e) A drug for which the department requires prior authorization if prior authorization has not been approved, and

(f) A drug that has reached the manufacturer's termination date, indicating that the drug may no longer be dispensed by a pharmacy.

(2) If authorized by the prescriber, a prescription for a:

(a) Controlled substance in Schedule III-V may be refilled up to five (5) times within a six (6) month period from the date the prescription was written or ordered, at which time a new prescription shall be required;

(b) Except as prohibited in subsection (4), of this section, non-controlled substance may be refilled up to eleven (11) times within a twelve (12) month period from the date the prescription was written or ordered, at which time a new prescription shall be required.

(3) For each initial filling or refill of a prescription, a pharmacist shall dispense the drug in the quantity prescribed not to exceed a thirty-two (32) day supply unless:

(a) The drug is designated in the department's drug list as a drug exempt from the thirty-two (32) day dispensing limit in which case the pharmacist may dispense the quantity prescribed not to exceed a three (3) month supply or 100 units, whichever is greater;

(b) A prior authorization request has been submitted on the Drug Prior Authorization Request Form (MAP-82001) and approved by the department because the recipient [member] [recipient] needs additional medication while traveling or for a valid medical reason, in which case the pharmacist may dispense the quantity prescribed not to exceed a three (3) month supply or 100 units, whichever is greater;

(c) The drug is packaged by the manufacturer and is intended to be dispensed as an intact unit and it is impractical for the pharmacist to dispense only a month's supply because one (1) or more units of the packaged drug will provide more than a thirty-two (32) day supply;

(d) The prescription fill is for an outpatient service recipient [member] [recipient], excluding an individual who is receiving support for community living services in accordance with 907 KAR 1:145.

(4) A prescription fill for a maintenance drug for an outpatient service recipient [member] [recipient] who has demonstrated stability on the given maintenance drug [insurance], excluding an individual receiving support for community living services in accordance with 907 KAR 1:145, shall be dispensed in a ninety-two (92) day supply unless:

(a) The department determines that it is in the best interest of the recipient [member] [recipient] to dispense a smaller supply; or

(b) The recipient [member] [recipient] is covered under the Medicare Part D benefit in which case the department shall not cover the prescription fill.

(c) The prescription is expected to be covered under the Medicare Part D benefit effective January 1, 2006, and the dispensing occurs within ninety-two (92) days of January 1, 2006, the amount dispensed (and the amount that the department shall cover) shall equal the number of days between the dispensing and January 1, 2006, multiplied by the number of days from January 1, 2006, to one (1) day prior to January 1, 2006, a seventy-three (73) day supply. If the dispensing occurs seventy-two (72) days prior to January 1, 2006, a seventy-two (72) day supply shall be dispensed and the department shall cover a seventy-two (72) day supply.

(5) The department may require prior authorization for a compounded drug that requires preparation by mixing two (2) or more individual drugs; however, the department may exempt a compounded drug from prior authorization if there has been a review and determination by the department that it is in the best interest of a recipient [member] [recipient] for the department to make payment for the compounded drug or compounded drug category.

(6) An identification number shall be made available by a prescriber and shall be recorded on the pharmacy claim in accordance with the following:

(a) The medical license number of a physician for the state in which the physician practices or, for a physician who does not have a Kentucky state medical license number on file and who is enrolled in an approved graduate medical education program, the medical license number of the supervising physician;

(b) The license number, including applicable alpha characters, of a dentist, optometrist, or podiatrist for the state in which the individual practices;

(c) The registration number, including applicable alpha characters, of an advanced registered nurse practitioner registered in Kentucky or the registration number or license number, including applicable alpha characters, of an out-of-state advanced registered nurse practitioner for the state in which the individual practices;

(7) If it is determined by the department to be in the best interest of a recipient [member] [recipient], the department may designate a legend drug that may be provided through prior authorization to a recipient [member] [recipient] in an inpatient facility that does not bill patients, Medicaid, or other third-party payers for health care services.

(8) A recipient [member] [recipient] who has been restricted to a single pharmacy in accordance with 907 KAR 1:677 shall be required to obtain non emergency pharmacy services from the pharmacy to which the recipient [member] [recipient] has been restricted.

(9)(a) If not otherwise prohibited as provided in paragraphs (b), (c), or (d) of this subsection, the department shall cover no more than a total of four (4) prescriptions, of which no more than three (3) shall be brand name prescriptions per recipient per month.

(b) The four (4) prescription limit shall not apply if the recipient:

1. Is under nineteen (19) years of age;
2. Uses insulin for the management of diabetes; or
3. Is a nursing facility resident who does not have Medicare Part D drug coverage.

(c) A pharmacist may utilize a four (4) prescription limit override code for a recipient whose prescription will exceed
the four (4) prescription limit if the prescription is prescribed:

1. For any of the following conditions:
   a. Acute infection or infestation;
   b. Bipolar disorder;
   c. Cancer;
   d. Cardiac rhythm disorder;
   e. Chronic pain;
   f. Coronary artery or cerebrovascular disease (advanced
      atherosclerotic disease);
   g. Cystic fibrosis;
   h. Dementia;
   i. Diabetes;
   j. End stage lung disease;
   k. End stage renal disease;
   l. Folliculitis;
   m. Hemophilia;
   n. HIV or AIDS or immunocompromised;
   o. Hyperlipidemia;
   p. Hypertension;
   q. Hypercholesterolemia;
   r. Metabolic syndrome;
   s. Organ transplant;
   t. Psychotic disorder;
   u. Schizophrenic disorder;
   v. Schizotypal personality disorder; or
   2. As part of:
      a. Acute therapy for migraine headache or acute pain;
      b. Suppressive therapy for thyroid cancer.

1. An additional prescription or prescriptions may be covered if the department determines that it is in the best
   interest of the recipient to cover an additional prescription or (The department shall cover no more than a total of four (4)
   prescriptions, of which no more than three (3) shall be brand name prescriptions, per member per month unless the department
determines that it is in the best interest of the member to cover any additional prescriptions.

10. Unless the form is one (1) which has to be completed by the pharmacist, submit a prior authorization request in accordance

11. The department shall cover up to three (3) brand name prescriptions per month unless the department determines that it is in the best interest of the member to cover any additional brand name prescriptions. The department shall:
   a. Cover up to three (3) brand name prescriptions per recipient per month unless the department determines that it is in the best interest of the recipient to cover any additional brand name prescription; and
   b. Cover unlimited generic prescriptions per recipient per month in accordance with the requirements and limitations established in this administrative regulation.

12. [(A)] A refill of a prescription shall not be covered unless at least eighty (80) percent of the prescription time period has elapsed.

Section 4. Prior Authorization Process. (1) To request prior authorization for a drug, the Applicable Drug Prior Authorization Request Form, PPI and H2 Blocker Request Form, or the Brand Name Drug Request Form shall be submitted and sent by fax or, if necessary, via the web-based application located at the Web site of http://kentucky.fhsc.com/providers/documents, by mail, express delivery service, or messenger service to the department. If drug therapy needs to be started on an urgent basis to avoid jeopardizing the health of the recipient [member] [recipient] or to avoid causing substantial pain and suffering, the completed request form may be sent to the department's urgent fax number or submitted to the department via the web-based application located at the Web site of http://kentucky.fhsc.com/providers/documents. A request shall be submitted in accordance with the following:
   a. Drug Prior Authorization Request Form. This form shall be used by the pharmacist or the prescriber to request prior authorization for a drug other than a drug classified as a proton pump inhibitor or a H2 receptor blocker or for a brand name or generic drug. If the generic form of the drug is available. This form may also be used by the pharmacist to obtain prior authorization for special dispensing requests involving exceptions to the thirty-two (32) day maximum quantity limit including additional drugs needed for travel or other valid medical reasons.

   (b) Brand Name Drug Request Form. Except as provided in paragraphs (c) and (d) of this subsection, this form shall be used by the pharmacist to request prior authorization for a brand name or generic drug. If the generic form of the drug is available, unless the department has specifically exempted the drug from the requirement to use this form. The pharmacist shall:
   1. Complete a Brand Name Drug Request Form;
   2. Include on the Brand Name Drug Request Form the handwritten phrase "brand medically necessary" or "brand necessary" and the prescriber's signature for each specific drug requested, and
   3. Indicate on the Brand Name Drug Request Form:
      a. Whether the recipient [member] [recipient] has received treatment with available generic forms of the brand name drug and the length of therapy; and
      b. Why the recipient's [member's] [recipient's] medical condition is unable to be adequately treated with the generic forms of the drug.

   (c) A Brand Name Drug Request Form shall not be required if:
      1. It has been determined by the department to be in the best interest of a recipient [member] [recipient] not to require completion of a Brand Name Drug Request Form; and
      2. The prescriber certifies that the brand name drug is medically necessary in accordance with subsection (3) of this section.

   (d) PPI and H2 Blocker Request Form. This form shall be used to request prior authorization for a drug classified as a proton pump inhibitor or a H2 receptor blocker. This form may also be used for a brand name drug only if the generic form of the proton pump inhibitor or H2 blocker is available and the prescriber completes the applicable section of the form and:
      1. Includes on the form the handwritten phrase "brand medically necessary" or "brand necessary" and the prescriber's signature for each specific drug requested;
      2. Indicates whether the recipient [member] [recipient] has received treatment with available generic forms of the brand name drug and the length of therapy; and
      3. Indicates why the recipient's [member's] [recipient's] medical condition is unable to be adequately treated with the generic forms of the drug.

   (2) If a recipient [member] [recipient] presents a prescription to a pharmacist for a drug which requires prior authorization, the pharmacist shall:
      a. Shall, unless the form is one (1) which has to be completed by the pharmacist, submit a request for prior authorization in accordance with subsection (1) of this section; and
      b. Shall notify the prescriber or the prescriber's authorized representative that the drug requires prior authorization and:
         1. If the prescriber indicates that a drug listed alternative available without prior authorization is acceptable and provides a new prescription, shall dispense the drug list alternative; or
         2. If the prescriber indicates that drug list alternatives available without prior authorization have been tried and failed or are clinically inappropriate or if the prescriber is unwilling to consider drug list alternatives, shall:
            a. Request that the prescriber obtain prior authorization from the department; or
            b. Unless the form is one (1) which has to be completed by the pharmacist, submit a prior authorization request in accordance with subsection (1) of this section; or
            c. Except as restricted by subparagraphs 3 and 4 of this paragraph, may provide the recipient [member] [recipient] with an emergency supply of the prescribed drug in an emergency situation in accordance with all of the following:
               1. The emergency situation shall:
                  a. Occur outside normal business hours of the department's drug prior authorization office, except for medications dispensed to a long term care recipient [member] [recipient] in which an emergency supply may be dispensed after 5 p.m. EST; and
                  b. Exist if, based on the clinical judgement of the dispensing pharmacist, it would reasonably be expected that, by a delay in
providing the drug to the recipient [member] [recipient], the health of the recipient [member] [recipient] would be placed in serious jeopardy or the recipient [member] [recipient] would experience substantial pain and suffering;

2. At the time of the dispensing of the emergency supply, the pharmacist shall in accordance with subsection (1) of this section:
   a. Submit a prior authorization request to the department or the department's urgent fax number or to the department via the web-based application located at the Web site of http://kentucky.facs.com/providers/documents.asp; or
   b. If applicable, notify the prescriber as soon as possible that an emergency supply was dispensed and that the prescriber is required to obtain prior authorization for the requested drug from the department;

3. An emergency supply shall not be provided for an over-the-counter (OTC) drug;

4. An emergency supply shall not be provided for a drug excluded from coverage in accordance with Section 3(1) (a), (b) or (c) of this administrative regulation; and

5. The quantity of the emergency supply shall be:
   a. The lesser of a seventy-two (72) hour supply of the drug or the amount prescribed; or
   b. The amount prescribed if it is not feasible for the pharmacist to dispense just a seventy-two (72) hour supply because the drug is packaged in such a way that it is not intended to be further divided at the time of dispensing but rather dispensed as originally packaged;

(3) In addition to the requirements of subsection (1) of this section, the prescriber shall be required to certify a brand name only request by including for each brand name drug requested the prescriber’s signature and the phrase "Brand Medically Necessary" or "Brand Necessary" handwritten directly on:
   a. The prescription;
   b. The nursing facility order sheet; or
   c. A separate sheet of paper which includes the name of the recipient [member] [recipient] and the brand name drug requested and is attached to the original prescription or nursing facility order sheet.

(4) The department's notification of a decision on a request for prior authorization shall be made in accordance with the following:
   a. If the department approves a prior authorization request, notification of the approval shall be provided by telephone, fax or via the web-based application located at the Web site of http://kentucky.facs.com/providers/documents.asp to the party requesting the prior authorization and, if known, to the pharmacist.
   b. If the department denies a prior authorization request:
      1. The department shall provide a denial notice:
         a. By mail to the recipient [member] [recipient] in accordance with KRS 205.563; and
         b. By fax, telephone, or if necessary by mail to the party who requested the prior authorization.
      5. The department may grant approval of a prior authorization request for a drug for a specific recipient [member] [recipient] for a period of time not to exceed 365 days. Approval of a new prior authorization request shall be required for continuation of therapy subsequent to the expiration of a time-limited prior authorization request.
   6. Prior authorization of drugs for a Medicaid long-term care recipient [member] [recipient] in a nursing facility shall be in accordance with the following:
      a. The department may specify in its drug list specific drugs or drug classes which shall:
         1. Not be exempted from prior authorization; or
         2. Be exempt from prior authorization for Medicaid recipients [members] [recipient] in nursing facilities.
      (b) A brand name drug for which the department requires completion by the prescriber of a Brand Name Drug Request Form in accordance with this section shall not be exempted from prior authorization.

Section 5. Placement of Drugs on Prior Authorization. (1) Except as excluded by Section 3(1)(a) to (c) of this administrative regulation, upon initial coverage by the Kentucky Medicaid program, a drug that is newly approved for marketing by the Food and Drug Administration under a product licensing application, new drug application, or a supplement to a new drug application and that is a new chemical or molecular entity shall be subject to prior authorization in accordance with KRS 205.563.

(2) Upon request by the department, a drug manufacturer shall provide the department with a drug package insert information.

(3) The drug review process to determine if a drug shall require prior authorization shall be in accordance with the following:
   (a) The determination as to whether a drug is in an excluded category specified in Section 3(1) of this administrative regulation shall be made by the department.
      1. If a drug, which has been determined to require prior authorization becomes available on the market in a new strength, package size, or other form that does not meet the definition of a new drug the new strength, package size, or other form shall require prior authorization.
   2. A brand name drug for which there is a generic form that contains identical amounts of the same active drug ingredients in the same dosage form and that meets compendial or other applicable standards of strength, quality, purity, and identity in comparison with the brand name drug shall require prior authorization in accordance with Section 4 of this administrative regulation, unless there has been a review and determination by the department that it is in the best interest of a recipient [member] [recipient] for the department to cover the drug without prior authorization.
   (b) The committee shall make a recommendation to the department regarding prior authorization of a drug based on:
      1. A review of clinically-significant adverse side effects, drug interactions and contraindications and an assessment of the likelihood of significant abuse of the drug; and
      2. An assessment of the cost of the drug compared to other drugs used for the same therapeutic indication and whether the drug offers a substantial clinically-meaningful advantage in terms of safety, effectiveness, or clinical outcome over other available drugs used for the same therapeutic indication. Cost shall be based on the net cost of federal rebate and supplemental rebate dollars.
   (c) Within thirty (30) days of the date the committee's recommendation is posted on the department's web site, the secretary, in consultation with the commissioner and the department's pharmacy director, shall review the recommendations of the committee and make the final determination whether a drug requires prior authorization. If the recommendation of the committee is not accepted, the secretary shall present the basis for the final determination in accordance with Section 8(3) of this administrative regulation.

(4) The department may exclude from coverage or require prior authorization for a drug which is a permissible restriction in accordance with 42 U.S.C. 1395r-6(d).

Section 6. Drug Management Review Advisory Board Meeting Procedures and Appeals. (1) A person may address the DMAB if:
   (a) The presentation is directly related to an agenda item; and
   (b) Written notice has been given to the chairperson at least twenty-four (24) hours prior to the meeting.

(2) The DMAB may establish time limits for presentations.

(3) The proposed agenda shall be posted on the department's Internet web site at least five (5) days prior to the meeting.

(4) An appeal of a final decision by the commissioner by a manufacturer of a product shall be in accordance with KRS 205.563(5). The appeal request shall:
   (a) Be in writing;
   (b) State the specific reasons the manufacturer believes the final decision to be incorrect;
   (c) Provide any supporting documentation; and
   (d) Be received by the department within thirty (30) days of the manufacturer's actual notice of the final decision.

Section 7. Pharmacy and Therapeutics Advisory Committee Meeting Procedures. (1) A P&T Committee meeting agenda shall be posted as required by KRS 205.564(6).

(2) A P&T committee meeting shall be conducted in accordance with KRS 205.564.

(3) A public presentation at a P&T Committee meeting shall comply with the following:

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13B. An appeal request shall:
(a) Be in writing;
(b) Be sent by mail, messenger, carrier service, or express delivery service to the secretary in a manner that safeguards the information;
(c) State the specific reasons the final determination of the secretary is alleged to be erroneous or not based on the facts and law available to the committee and the secretary at the time of the decision;
(d) Be received by the secretary within thirty (30) days of the date of the posting of the final determination on the department’s Internet web site; and
(e) Be forwarded by the secretary to the Administrative Hearings Branch of the Cabinet for Health and Family Services for processing in accordance with the provisions of KRS Chapter 13B.

Section 9. Appeal Rights. A Medicaid recipient [member] [recipient] may appeal the department’s denial, suspension, reduction, or termination of a covered drug or decision regarding the amount of a drug dispensed based upon an application of this administrative regulation in accordance with 907 KAR 1:963.

Section 10. Incorporation by Reference. (1) The following material is incorporated by reference:
(a) "MAP-82001 Drug Prior Authorization Request Form, October 18, 2004, edition";
(b) "MAP-82101 Brand Name Drug Request Form, October 18, 2004, edition";
(c) "MAP-012802 FPI and H-2 Blocker Request Form, October 18, 2004, edition".

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

SHANNON TURNER, J.D., Commissioner
MIKE BURNSIDE, Deputy Secretary
MARK D. BIRD/WHISTELL, Secretary
APPROVED BY AGENCY: February 22, 2006
FILED WITH LRC: February 28, 2006 at 4 p.m.

CONTACT PERSON: Stuart Owen, Cabinet for Health and Family Services, Medicaid Services, 275 East Main Street, 6W-C, Frankfort, Kentucky 40601, phone (502) 564-6204, fax (502) 564-6917.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Mental Health and Mental Retardation Services
Division of Administration and Financial Management
(As Amended at AFRS, June 13, 2006)


RELATES TO: KRS 210.700-210.760, [EQ-2004-726]

NECESSITY, FUNCTION, AND CONFORMITY: [EQ-2004-726], effective July 9, 2004, reorganized the Cabinet for Health Services and placed the Department for Mental Health and Mental Retardation Services under the Cabinet for Health and Family Services. KRS 210.710 and 210.720 require [requires] the Secretary to adopt a "Means test" for determining the ability to pay of the patient or person responsible for the patient for board, maintenance and treatment at a facility operated or utilized by the cabinet for the mentally ill or mentally retarded. This administrative regulation establishes the "Means test" in compliance with KRS 210.710 to KRS 210.760.

Section 1. Definitions. (1) "Allowed deduction" means an amount disregarded or deducted from income and assets for the purpose of determining the ability to pay for services rendered by a facility.
(2) "Available assets" means resources of the patient or person

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responsible for the patient in accordance with KRS 210.720(3),
less the applicable protections specified in Section 2(7) of this
administrative regulation.
(3) "Deductible" means an amount that a patient or person
responsible for the patient is expected to pay toward their care by
a third-party payor such as Medicare or a private insurance
company.
(4) "Facility" is defined in KRS 210.710(2).
(5) "Income" means funds received by the patient or person
responsible for the patient and includes the following:
(a) Salaries;
(b) Wages;
(c) Self-employed gross revenues, less operating expenses;
(d) Benefit payments, except for Supplemental Security In-
come payments;
(e) Social Security payments;
(f) Rents;
(g) Royalties;
(h) Pensions;
(i) Retirement payments;
(j) Veteran's Administration payments;
(k) Black lung benefits;
(l) Railroad retirement benefits;
(m) Gifts;
(n) Settlements;
(o) Trust receipts;
(p) Alimony, but does not include child support payments;
(q) Interest income; and
(r) Income from investments.
(6) "Patient" means a person admitted to a facility.
(7) "Person responsible for the patient" is defined in KRS
210.710(5).
(8) "Personal Needs Allowance" means an amount of re-
sources deducted from income for the patient's personal needs,
including clothing and other miscellaneous items required by the
patient.
(9) "Poverty Guidelines" means the latest federal poverty
measurement guidelines issued by the United States Department
of Health and Human Services and published annually in the Fed-
eral Register, under the authority of 42 U.S.C. 9902(2).

Section 2. Determination of the Ability to Pay for Services
Rendered at Facilities. (1) The facility shall apply the means test to
each patient who is admitted to the facility for treatment.
(2) The means test shall include a determination of the respon-
sible party or parties to pay for the patient's care, which shall be
documented using the "PATIENT OR RESPONSIBLE PARTY
FINANCIAL RECORD" form. This form shall be explained to the
patient or person responsible for the patient and signed by all par-
ties. If the patient or person responsible for the patient refuses to
sign, this refusal shall be noted on the form along with the date the
form was discussed. Refusal to sign the form shall not absolve the
liability of the patient or person responsible for the patient to pay for
services rendered.
(3) The amount a patient or person responsible for the patient
is required to pay for services shall be the lesser of:
(a) The cost per patient day in accordance with 908 KAR
3:050, less any amount paid by Medicaid, Medicare, and other
third-party payment sources; or
(b) The amount the patient is deemed able to pay in accord-
ance with this administrative regulation.
(4) The facility shall determine the financial resources available
to the patient or person responsible for the patient including:
(a) Insurance and third-party payors;
(b) Income received or expected to be received during the
period of hospitalization; and
(c) Available assets.
(5) The following shall be allowed deductions from income:
(a) Federal income taxes;
(b) State income taxes;
(c) Social security taxes;
(d) Normal retirement contributions;
(e) Unpaid medical and dental bills;
(f) Health insurance premiums;
(g) Medicare Part B insurance premiums;
(h) Long-Term Care insurance premiums;
(i) A personal needs allowance of forty (40) dollars per month;
(j) Student loan payments;
(k) Room and board reservation costs at another facility for up to
fourteen (14) days as long as the patient's stay is expected to be
shorter than the reservation period;
(l) Child support payments;
(m) Life insurance premiums if the patient's estate or a funeral
home is the named beneficiary on the policy; and
(n) A basic maintenance allowance, derived from the Poverty
Guidelines, as contained in Table I of Section 3(6) of this admin-
istrative regulation for the size of the patient's family if the following
conditions are met: 1.
The patient was maintaining a residence immediately prior
to admission;
2. The residence will continue to be maintained during the
period of hospitalization and resources of the patient are needed
for this effort;
3. Facility staff expects the patient's hospital stay to be three
(3) months or less in duration; and
4. Dependents used in the calculation of the basic mainte-
nance allowance shall include a legally-recognized spouse and
each individual less than eighteen (18) years of age and in the
patient's care.
(6) An estimated income tax related deduction of twenty-five
(25) percent of total income shall be allowed in lieu of the actual
wages taxes contained in subsection (5) of this section. A patient or
person responsible for the patient may request that actual tax
amounts be used instead of the estimated deduction if they can
substantiate the actual tax amounts.
(7) The following shall be excluded from the calculation of
available assets:
(a) Prepaid funeral plans of up to $1,500 per family member;
(b) Automobiles;
(c) Housing structures;
(d) Land;
(e) Retirement accounts;
(f) Pension funds;
(g) Trust funds that cannot (see net) be accessed;
(h) The applicable amount contained in Table II of Section 3(5)
of this administrative regulation for the size of the patient's family
using the dependent counting guidelines contained in subsection
(5)(6) of this section; and
(i) Other assets that are exempted under state law, if any.

Section 3. Calculation of the Amount the Patient or Person
Responsible for the Patient is Able to Pay.
(1) The facility shall calculate the ability to pay amount utilizing
either the "ABILITY TO PAY WORKSHEET" or the "DEDUCTIBLE
ABILITY TO PAY WORKSHEET" as appropriate:
(a) Determine the total amount of income of the patient or per-
son responsible for the patient;
(b) Determine the amount of allowed deductions from income
in accordance with Section 2(5) of this administrative regulation;
(c) Subtract the allowed deductions from income; and
(d) The remaining available income shall be divided by 365 to
obtain the average daily income of the patient or person respon-
sible for the patient.
(2) If the patient or person responsible for the patient has
available assets, the facility shall:
(a) Determine the amount of available assets in accordance
with Section 2(7) of this administrative regulation; and
(b) Include available assets that remain after the deduction in
the patient or person responsible for the patient's ability to pay
amount.
(3) Payments to be made on behalf of the patient by a third-
party payor, such as Medicare, Medicaid, or private insurance com-
panies, shall be subtracted from the facility's per diem rate as con-
tained in 908 KAR 3 050. Any remaining liability shall be satisfied
as follows with the exception of ability to pay amounts arising from
deductibles:
(a) The available income of the patient or person responsible
for the patient shall first be applied to the patient's liability for serv-
ices;
(b) Any liability that remains after application of the average available income shall be satisfied by available assets; and
(c) The applicable average income per day and available asset amount per day shall be combined to determine the ability to pay amount. The ability to pay amount shall be charged for each day the patient is in the facility.

(4) Ability to pay liabilities arising from deductibles shall first be applied to available assets of the patient or person responsible for the patient with any remaining liability being satisfied with available income.

(5) If the Department for Medicaid Services performs an income assessment for a Medicaid patient residing in a nursing facility, intermediate care facility for the mentally retarded, or psychiatric hospital in accordance with 907 KAR 1.655, that Medicaid income assessment shall be relied upon in lieu of the ability to pay provisions established in this administrative regulation.

(6) After the ability to pay is determined for the patient or person responsible for the patient, a "PATIENT OR RESPONSIBLE PARTY FINANCIAL AGREEMENT AND ASSIGNMENT" form shall be completed. This form shall be explained to the patient or person responsible for the patient and signed by all parties. If the patient or person responsible for the patient refuses to sign, this refusal shall be noted on the form including the date the form was discussed. Refusal to sign the form shall not absolve the liability of the patient or person responsible for the patient to pay for services rendered.

**TABLE I. BASIC MAINTENANCE ALLOWANCE TABLE**

<table>
<thead>
<tr>
<th>Size of Family</th>
<th>Allowed Deduction from Income*</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>$9,800 ($2,340)</td>
</tr>
<tr>
<td>2</td>
<td>$13,200 ($12,490)</td>
</tr>
<tr>
<td>3</td>
<td>$16,600 ($16,670)</td>
</tr>
<tr>
<td>4</td>
<td>$20,000 ($18,860)</td>
</tr>
<tr>
<td>5</td>
<td>$23,400 ($22,930)</td>
</tr>
<tr>
<td>6</td>
<td>$25,210</td>
</tr>
<tr>
<td>7</td>
<td>$28,390</td>
</tr>
<tr>
<td>8</td>
<td>$31,570</td>
</tr>
</tbody>
</table>

*For additional dependents, add $3,400 ($3,180).

**TABLE II. ABILITY TO PAY ASSETS TABLE**

<table>
<thead>
<tr>
<th>Size of Family</th>
<th>Allowed Deduction from Assets*</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>$2,000</td>
</tr>
<tr>
<td>2</td>
<td>4,000</td>
</tr>
<tr>
<td>3</td>
<td>4,050</td>
</tr>
<tr>
<td>4</td>
<td>4,100</td>
</tr>
</tbody>
</table>

*For each additional dependent, add fifty (50) dollars.

Section 4. Revisions to Ability to Pay Amounts. (1) Facility staff shall update a patient's ability to pay amount to incorporate changes that take place subsequent to the initial determination. These changes may include:
(a) Income revisions;
(b) Asset revisions including exhaustion of available assets;
(c) Change in allowed deductions;
(d) Change in a dependent of the patient or person responsible for the patient; or
(e) Change regarding the status of the person responsible for the patient.

(2) Upon a change to the ability to pay information, a revised "ABILITY TO PAY WORKSHEET" or "DEDUCTIBLE ABILITY TO PAY WORKSHEET" shall be prepared along with a revised "PATIENT OR RESPONSIBLE PARTY FINANCIAL RECORD" form and a revised "PATIENT OR RESPONSIBLE PARTY FINANCIAL AGREEMENT AND ASSIGNMENT" form. The revised forms shall be presented to the patient or person responsible for the patient in the same manner as the original forms.

Section 5. Failure to Provide Financial Information or to Assign Benefits. (1) If the patient or person responsible for the patient fails to or will not provide the information necessary to calculate the ability to pay amount, the maximum charge provided in Section 2(3)(a) of this administrative regulation shall be assessed.

(2) If the patient or person responsible for the patient fails to sign the assignment provision contained in the "PATIENT OR RESPONSIBLE PARTY FINANCIAL AGREEMENT AND ASSIGNMENT" form, the maximum charge provided in Section 2(3)(e) of this administrative regulation shall be assessed.

Section 6. Payment Hardship, Appeal and Waiver Procedures.

(1) Payment hardships.
(a) The patient or person responsible for the patient believes that payment of the ability to pay amount results in a financial hardship, the patient or person responsible for the patient may request to make installment payments.
(b) This request shall be made in writing to the facility's patient billing supervisor and shall include documentation to support the claimed hardship.
(c) The patient billing supervisor shall review the financial hardship request and render a payment plan decision within fifteen (15) days from the receipt of the hardship request.

(2) Appeals.
(a) If the patient or person responsible for the patient is aggrieved by the facility charges or a payment plan determined in accordance with this administrative regulation, they may appeal the determination to the facility director or their designee for informal resolution within thirty (30) days of the ability to pay charge or payment plan being calculated.
(b) The facility director or their designee shall review the appeal and issue a determination within thirty (30) days of receipt.
(c) If the patient or person responsible for the patient is dissatisfied with the informal resolution, they may file an appeal within thirty (30) days of the facility's response to the Director of the Division of Administration and Financial Management, 100 Fair Oaks Lane, 4th Floor (4E-A), Frankfort, Kentucky 40621-0001 who shall arrange for an administrative hearing in accordance with KRS Chapter 13B.

(3) Waivers.
(a) The director of each facility may waive payment of his or her facility's charges under this administrative regulation if waiver is deemed to be in the best interest of all parties.
(b) The Director of the Division of Administration and Financial Management shall have the authority to waive payment at any facility within the department if waiver is deemed to be in the best interest of all parties.

Section 7. Incorporation by Reference. (1) The following material is incorporated by reference:
(a) MHMR 3:060-1 "ABILITY TO PAY WORKSHEET (March 2002) [August 2004];"
(b) MHMR 3:060-2 "DEDUCTIBLE ABILITY TO PAY WORKSHEET (March 2002) [August 2004];"
(c) MHMR 3:060-3 "PATIENT OR RESPONSIBLE PARTY FINANCIAL AGREEMENT AND ASSIGNMENT (August 2004);" and
(d) MHMR 3:060-4 "PATIENT OR RESPONSIBLE PARTY FINANCIAL RECORD (March 2006) [August 2004]."

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Mental Health and Mental Retardation Services, 100 Fair Oaks Lane, Frankfort, Kentucky 40621-0001, Monday through Friday, 8 a.m. to 4:30 p.m.

JOHN M. BURT, Ed. D, Commissioner
MIKE BURNSIDE, Deputy Secretary
MARK D. BIRDWHISTELL, Secretary
APPROVED BY AGENCY: March 29, 2005
FILED WITH LTC: March 30, 2006 at 4 p.m.
CONTACT PERSON: Jill Brown, Cabinet for Health and Family Services, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40601, phone (502) 564-7905, fax (502) 564-7573.
CABINET FOR HEALTH AND FAMILY SERVICES
Department for Community Based Services
Division of Policy Development
(As Amended at ARRS, June 13, 2006)

921 KAR 3:060. Administrative disqualification hearings and penalties.

RELATES TO: 7 C.F.R. 273.15, 273.17, [FNS/Sold Regula-
tions Supplement, 273.16 (62-14) (7-28-82), 273.16, FNS/Sold
Regulations Supplement, 273.16 (61-1) (82-5), (12-16-82), 50 FR

STATUTORY AUTHORITY: KRS Chapter 13B, 194A.010(2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS
194A.010(2) requires the Cabinet for Health and Family Services
to administer income-supplement programs that protect, develop,
preserve, and maintain families and children in the Common
wealth. KRS 194A.050(1) requires the Secretary to promulgate
administrative regulations necessary to implement programs mant-
ened by federal law or to qualify for the receipt of federal funds
and necessary to operate with other state and federal agencies
for the proper administration of the cabinet and its programs. 7
C.F.R. 273.14 requires each state to administer a Food Stamp Pro-
gram. 7 C.F.R. 273.16 requires the agency administering the Food
Stamp Program to provide a hearing process for individuals ac-
cused of intentionally violating a Food Stamp Program regulation
to impose penalties and disqualifications for such viola-
tions. KRS Chapter 13B establishes the hearing process to be
followed in the Commonwealth. This administrative regulation es-
tablishes the procedures used by the cabinet in determining if an
intentional program violation, or IPV, has occurred and the pen-
alties that shall be applied. An IPV (194A.060(4)) requires the Sec-
cretary of the Cabinet for Health and Family Services to promulgate
administrative regulations, develop policies, and operate programs
necessary under applicable state laws to protect, develop, and
maintain the welfare, personal dignity, integrity and sufficiency of
the citizens of the Commonwealth. 7 U.S.C. 2011 to 2019 author-
izes the cabinet to administer a Food Stamps Program and pro-
vides the manner in which the program shall be implemented. 7
C.F.R. 273.14 authorizes the cabinet to determine the amount of,
and settle, adjust, compromise or deny all or part of any claim
which results from the fraudulent or nonfraudulent overissuances to
participating households. KRS 13B.030 authorizes an agency
head to exercise all powers conferred on an agency relating to the
conduct of administrative hearings. This administrative regulation
establishes the procedures used by the cabinet to determine if an
out-of-intentional-program-violation has occurred and appropriate
penalties that shall be applied.

Section 1. Administrative Disqualification Hearings. (1) Unless
a different procedure is specified in this administrative regulation,
an administrative disqualification hearing shall:
(a) Be conducted in accordance with 921 KAR 3:070 and KRS
Chapter 13B; and
(b) Include:
1. The issuance of a recommended order;
2. Procedures for written exceptions; and
3. The issuance of a final order.
(2) The cabinet shall retain:
(a) The official record of an administrative disqualification
hearing until all appeals have been exhausted, and
(b) A case record with an IPV disqualification indefinitely.

Section 2. Intentional Program Violations. (1) If the cabinet
suspects that an individual committed an IPV, as defined in 921
KAR 3:010, the cabinet shall:
(a) Initiate an administrative disqualification hearing;
or
(b) If warranted by the facts of the case, refer the suspected
IPV claim to the Office of the Inspector General, or OIG, for in-
vestigation or referral for prosecution.
(2) An administrative disqualification hearing may be initiated
regardless of the current eligibility of an individual.
(3) If the OIG determines that the IPV does not warrant investi-
gation or referral for prosecution, the cabinet shall initiate an ad-
mnistrative disqualification hearing as specified in this administra-
tive regulation.

Section 3. Notification. (1) Form FS-80, "Notice of Suspected
Intentional Food Stamp Program Violation", shall serve as the noti-
fication to a household of the:
(a) Cabinet's suspicion that an IPV has been committed;
(b) Amount and period of the overpayment for the suspected
IPV; and
(c) Household's right to an administrative disqualification hear-
ing.
(2) The cabinet shall provide an individual suspected of an IPV
a form FS-80, Supplement A, "Voluntary Waiver of Administrative
Disqualification Hearing", which allows the individual to waive the
right to an administrative disqualification hearing, with or without
admitting an IPV was committed.
(3) If the household does not return the FS-80 Supplement A, the
cabinet shall schedule an administrative disqualification hear-
ing in accordance with 7 C.F.R. 273.16(e)(2).
(4) In accordance with KRS 13B.060, the administrative dis-
qualification hearing notice shall be sent:
(a) By certified mail;
(b) To the address on file, and
(c) With a return receipt requested.
(5) The administrative disqualification hearing notice shall pro-
vide information as specified in 7 C.F.R. 273.16(e)(2)(ii).
(6) In accordance with 7 C.F.R. 273.16(e)(2)(ii), the hearing
officer shall advise the household member or representative that
they may refuse to answer questions during the hearing.
(7) The cabinet shall provide a household notice regarding the
IPV determination in accordance with 7 C.F.R. 273.16(e)(9) and
KRS 13B.120.

Section 4. Timeframes. (1) Within the ninety (90) day time-
frame specified in 7 C.F.R. 273.16(e)(2)(iv), the cabinet shall
(a) Conduct an administrative disqualification hearing; and
(b) Issue a final order pursuant to the provisions established in
921 KAR 3:070, Section 16.
(2) In accordance with 7 C.F.R. 273.16(e)(2)(iv), a hearing may
be postponed:
(a) One (1) time, and
(b) For no more than thirty (30) days.
(3) If a hearing is postponed, the time limit specified in subsec-
tion (1) of this section shall be extended for as many days as the
hearing is postponed.

Section 5. Hearing Attendance. (1) An administrative disqualifi-
cation hearing shall be conducted in accordance with 7 C.F.R.
273.16(e)(4).
(2) If a household representative does not appear for the ad-
mnistrative disqualification hearing, the hearing officer shall review
the case file to determine if the hearing shall:
(a) Proceed without household representation, because the
return receipt from the hearing notice verified the notice was
received by the individual; or
(b) Not be conducted, because the hearing notice or return
receipt is annotated as unclaimed or undeliverable.
(3) In accordance with 7 C.F.R. 273.16(e)(4), the cabinet shall
conduct a new hearing if the:
(a) Household was not represented at the hearing;
(b) Individual was determined to have committed an IPV; and
(c) Hearing officer later determines the household had good
cause, in accordance with 921 KAR 3:070, Section 8(2), for not
appearing.

Section 6. Benefits and Participation. (1) In accordance with 7
C.F.R. 273.16(e)(5), the participation (and, benefit-level) of a
household suspected of an IPV shall not be affected by the sus-
pected IPV until a disqualification is implemented based on the:
(a) IPV being substantiated by the final order or a court of ap-
propriate jurisdiction;
(b) Individual waiving the right to an administrative disqualifica-
tion hearing by completing, signing, and returning the FS-80, Supp-
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Section 7. Deferred Adjudication. (1) The cabinet shall accept a completed form FS-111, "Deferred Adjudication Disqualification Consent Agreement." In a case of deferred adjudication pursuant to 7 C.F.R. 273.16(b), (b) In accordance with 7 C.F.R. 273.16(b), the cabinet shall notify an individual signing a FS-111 of the:
(a) Consequences of consenting to disqualification;
(b) Disqualification; and
(c) Effective date of the disqualification.

Section 8. Penalties. (1) In accordance with 7 C.F.R. 273.16(b), an individual shall be ineligible to participate in the Food Stamp Program when the individual has:
(a) Committed an IPV, as determined by: 1. An administrative disqualification hearing; or 2. A court; or
(b) Signed a waiver of right to an administrative disqualification hearing or a disqualification consent agreement.
(2) (a) The time periods for IPV disqualifications shall be implemented in accordance with 7 C.F.R. 273.16(b).
(b) In accordance with 7 C.F.R. 273.16(b), the cabinet shall only disqualify the individual who meets the criteria specified in subsection (1) of this section, not the entire household.
(3) In accordance with 7 C.F.R. 273.16(b), the cabinet shall hold the entire household responsible for making restitution on an overpayment, not just the disqualified individual.
(4) The cabinet shall inform the household in writing of the disqualification penalties for committing an IPV each time the household applies for benefits.

Section 9. Procedures for Appeal. In accordance with 7 C.F.R. 273.16(a)(1): (1) Further administrative appeal procedures shall not exist after an:
(a) Administrative disqualification hearing determines that an IPV was committed; or
(b) Individual waives the right to an administrative disqualification hearing.
(2) A hearing officer's determination of an IPV shall not be reversed by a final order from a subsequent fair hearing; and
(3) An individual determined to have committed an IPV may seek relief in a court having appropriate jurisdiction pursuant to KRS 138.140.

Section 10. Incorporation by Reference. (1) The following material is incorporated by reference:
(a) "FS-80, Notice of Suspected Intentional Food Stamp Program Violation, edition 7/06;"
(b) "FS-80, Supplement A, Voluntary Waiver of Administrative Disqualification Hearing, edition 7/06; and"
(c) "FS-111, Deferred Adjudication Disqualification Consent Agreement, edition 7/06."
(2) Except as provided by subsection (3) of this section, an administrative disqualification hearing shall be initiated by the cabinet if it has documented evidence to prove that a household member has committed an act of intentional program violation, pursuant to 521 KAR 3:070.
(3) An administrative disqualification hearing may be initiated regardless of the current eligibility of an individual.
(4) The cabinet may refer the claim to the following for investigation and prosecution by a court of competent jurisdiction, the:
(a) Office of Inspector General, or OIG, or
(b) Office of the Attorney General, or OAG.
Section 4. Scheduling the Disqualification Hearing. (1) The time and place of the hearing shall be arranged so that the hearing is accessible to the household member suspected of intentional program violation. 
(2) If the applicant, recipient, and a party or witness required to testify under oath or affirmation consents, a telephonic hearing may be conducted. 
(3) A party who wishes to introduce a document or written material into the record at the hearing shall mail a copy of the document to the hearing officer and to the opposing party prior to the date of the hearing. 
(4) Failure to provide both the hearing officer and the opposing party with a copy of evidence may result in the exclusion of the evidence from the record. 
(5) If the household member or his representative does not appear for a face-to-face or telephonic hearing, the cabinet shall determine whether preparatory advance notice was received by the household member pursuant to KRS 138.060. 
(a) If there is no proof that the household member received or refused a timely notice of the hearing, the hearing shall not be conducted. 
(b) The hearing process shall be initiated again if the household member is located and another notice is provided to that member. 
(c) If the cabinet has sufficient evidence to verify that the household member either received or refused the notice, the hearing shall be conducted. 
(d) Even if the household member is not present at the hearing, the hearing officer shall: 
   (a) Carefully consider the evidence; and
   (b) Determine if intentional program violation was committed based on clear and convincing evidence. 
(7) An administrative disqualification hearing shall comply with the requirements of KRS 138.060 and 138.090. 
(8) If the household member is found to have committed an intentional program violation, and a hearing officer later determines that the household member or his representative had good cause for not appearing, pursuant to 421 KAR 3:070, Section 10: 
(a) The previous decision shall not remain valid; 
(b) The cabinet shall conduct a new hearing; and 
(c) The hearing officer who originally ruled on the case may conduct the new hearing. 
(8) The household member shall have ten (10) days from the date of the scheduled hearing to present reasons indicating a good cause for failure to appear. 
(10) A hearing officer shall enter the good cause decision into the record. 
Section 5. Participation—While-Awaiting a Disqualification Hearing. (1) A suspected intentional program violation shall not affect the individual's or the household's right to be certified and participate in the program. 
(2) The cabinet shall determine the eligibility and benefit level of the household without regard to the suspected intentional program violation. 
(a) The hearing officer or a court of appropriate jurisdiction finds that the individual has committed intentional program violation. 
(b) The individual has completed and filed with the department form FS-80, Suppment A, "Voluntary Waiver of Administrative Disqualification Hearing." 
(c) The individual has completed and filed with the department form FS-111, "Deferred Adjudication—Disqualification—Consent Agreement." 
(d) The cabinet disqualifies the household member for intentional program violation. 
Section 6. Disqualification Hearing Decision. (1) The hearing officer shall base the determination of intentional program violation on clear and convincing evidence that demonstrates that the household member committed and intended to commit intentional program violation pursuant to 421 KAR 3:010, Section 14(28). 
(2) The decision of the hearing official shall:
   (a) Specify the reasons for the decision; 
   (b) Identify the:
      1. Supporting evidence; 
      2. Kentucky statutory citations, if applicable; 
      3. State administrative regulation, and 
      4. Corresponding federal regulation; and
   (c) Respond to reasons and arguments made by the household member or representative. 
(3) The case record shall be retained by the cabinet until all appeals have been exhausted. 
(a) The content of the case record shall comply with KRS 138.150. 
(b) The record shall be available to the household member or his representative during working hours for copying and inspection. 
Section 7. Notification of a Disqualification Hearing Decision. (1) The cabinet shall notify the household member in writing of: 
(a) The hearing decision; and 
(b) The rights to appeal that decision pursuant to KRS 138.140. 
(2) If the hearing finds that the household member committed intentional program violation, the notice shall:
   (a) Be provided prior to disqualification; 
   (b) Inform the household member of the disqualification; and 
   (c) Advise the household member when the disqualification shall take effect. 
(3) A notice shall be provided to the remaining household members informing them of: 
(a) The amount they shall receive during the disqualification period; and
   (b) That they may reapply because their certification period has expired. 
(4) A written demand letter shall be sent to the remaining household members explaining the repayment requirements. 
Section 8. Waiver Disqualification Hearing. (1) An individual accused of intentional program violation shall be allowed to waive his rights to an administrative disqualification hearing if he completes and files with the department form FS-80, Supplement A, "Voluntary Waiver of Administrative Disqualification Hearing." 
(2) The cabinet shall ensure that:
   (a) The appropriate field services supervisor or designated cabinet representative reviews the evidence against the household member suspected of an intentional program violation; 
   (b) A decision is obtained that the evidence warrants scheduling a disqualification hearing; and 
   (c) Written notification is provided to the household member suspected of intentional program violation, informing him of his right to waive an administrative disqualification hearing. 
Section 9. Deferred Adjudication. (1) An individual accused of intentional program violation shall be allowed to complete and file with the department form FS-111, "Deferred Adjudication Disqualification Consent Agreement," if there is a deferred adjudication. 
(2) The cabinet shall accept a completed form FS-111, "Deferred Adjudication—Disqualification—Consent Agreement," if a determination of guilt is not obtained from a court because the accused individual:
   (a) Met the terms of a court order; or 
   (b) Is not prosecuted because he met the terms of an agreement with the prosecutor. 
Section 10. Intentional Program Violation—Disqualification Penalties. (1) An individual found to have committed an intentional program violation pursuant to this administrative regulation shall be ineligible to participate in the Food Stamp Program:
   (a) Except as provided in subsections (2) through (6) of this section, a period of one (1) year upon the first occasion of intentional program violation; 
   (b) Except as provided in subsection (2) through (6) of this section, a period of two (2) years upon the second occasion of intentional program violation; and 
   (c) Permanently upon the third occasion of intentional program violation. 
(2) An individual found by a federal, state or local court to have
committed an act of intentional program violation by using or receiving food benefits in a transaction involving the sale of a controlled substance, pursuant to 21 U.S.C. 802, shall be ineligible to participate in the program;
(a) For a period of two (2) years upon the first occasion of the violation; and
(b) Permanently upon the second occasion of the violation.
(3) An individual found by a federal, state or local court to have committed an act of intentional program violation by using or receiving food benefits in a transaction involving the sale of firearms, ammunition or explosives shall be permanently ineligible to participate in the program upon the first occasion of the violation.
(4) An individual convicted by a federal, state, or local court of having trafficked food stamp benefits for an aggregate amount of $500 or more shall be permanently ineligible to participate in the program upon the first occasion of the violation.
(5) Except as provided pursuant to subsection (1)(e) of this section, an individual found to have made a fraudulent statement or representation with respect to the identity or place of residence of the individual in order to receive multiple food stamp benefits simultaneously shall be ineligible to participate in the program for a period of ten (10) years.
(6) The penalties in subsections (2) and (3) of this section shall also apply in cases of deferred adjudication, pursuant to Section 9 of this administrative regulation, if the court makes a finding that the individual engaged in the conduct pursuant to subsections (2) and (3) of this section.
(7) If a court fails to impose a disqualification period for an intentional program violation, the cabinet shall impose the appropriate disqualification penalty pursuant to subsections (1), (2), (3), (4), or (5) of this section, unless it is contrary to the court order.
(8) One (1) or more intentional program violations which occurred prior to April 1, 1983 shall be considered as only one (1) previous disqualification if determining the appropriate penalty to impose in a case under consideration.
(9) Regardless of when an action was taken by an individual that caused an intentional program violation to occur, the disqualification period pursuant to subsections (2) and (3) of this section shall apply to a case in which the court makes the requisite finding on or after September 1, 1994.
(10) The cabinet shall not disqualify everyone in the household from participating in the Food Stamp Program but shall disqualify only the individual who:
(a) Is found to have committed the intentional program violation;
(b) Has completed and filed with the department form FS-80, "Voluntary Waiver of Administrative Disqualification Hearing"; or
(c) Has completed and filed with the department form FS-111, "Deferred Adjudication Disqualification Consent Agreement".
(11) The cabinet shall disqualify only the individual from participating in the Food Stamp Program but the remaining household members shall make restitution for the amount of an overpayment, pursuant to 691 KAR 3-005.
(12) If the cabinet's determination of intentional program violation is reversed by a court, the cabinet shall:
(a) Reinstates the individual, if eligible; and
(b) Restore the benefits that were lost as a result of the disqualification.
(13) The cabinet shall inform the household in writing of the disqualification penalties for committing an intentional program violation each time the household applies for benefits.

Section 11. Appeal Rights of the Householder. (1) Further administrative appeal procedures shall not exist after an administrative disqualification hearing finds that:
(a) An intentional program violation was committed; or
(b) An individual has waived her right to an administrative disqualification hearing.
(2) The determination of intentional program violation made by a disqualification hearing official shall not be reversed by a subsequent administrative fair hearing decision.
(3) The household member who is subject to subsection (2) of this section shall be entitled to seek relief in a court having appro-
ADMINISTRATIVE REGULATIONS AMENDED AFTER PUBLIC HEARING OR RECEIPT OF WRITTEN COMMENTS

COMMERCER CABINET
Department of Fish and Wildlife Resources
(Amended After Comments)

301 KAR 1:085. Mussel shell harvesting.

RELATES TO: KRS 150.025, 150.110, 150.170, 150.175, 150.520

STATUTORY AUTHORITY: KRS 150.025(1), 150.520

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) authorizes the department to promulgate administrative regulations governing the taking of wildlife. KRS 150.520 grants the department specific authority to regulate the taking, buying and selling of mussels and to require reporting of musselling operations. This administrative regulation establishes licensing requirements, seasons, size limits, waters open, and reporting requirements for musselning.

Section 1. Section 1. Definitions. (1) "Braii" means a wood or metal rod with attached hooks which is dragged across the bottom to take mussels.
(2) "East side" means the area in Kentucky Lake or Barkley Lake east of the line of red navigational buoys marking the main channel.
(3) "Mussel" means:
   (a) An intact live or dead mussel;
   (b) A mussel shell; or
   (c) A part of a mussel shell.
(4) "To braii" means to take mussels using a braii.
(5) "To mussel" means to take mussels by means of commercial musselning gear.
(6) "West side" means the area in Kentucky Lake or Barkley Lake west of:
   (a) The line of red navigational buoys marking the channel; or
   (b) A water depth of fifty-five (55) feet.

Section 2. (1) Except as specified in subsection (2) of this section, a person shall possess a mussel license if he:
   (a) Has more than six (6) mussels in his possession, unless he has a mussel buyer's license;
   (b) Possesses commercial musselning equipment while on the water; or
   (c) Sells or attempts to sell a mussel.
(2) A licensed musseler may be accompanied by one (1) unlicensed helper.
(c) An unlicensed helper shall not perform an act authorized by a mussel license unless he is in the presence of a licensed musseler.

Section 3. A person shall not:
(1) Sell a mussel unless he has a valid:
   (a) Mussel license; or
   (b) Mussel buyer's license
(2) Buy a mussel:
   (a) Unless he has a valid mussel buyer's license, and
   (b) Except from a person holding a valid:
      1. Mussel license; or
      2. Mussel buyer's license.

Section 4. A musseler shall paint or affix his department issued identification number to his braii boat so it is clearly visible to aerial observation.

Section 5. (1) To apply for a mussel license, a person shall:
   (a) Complete a Mussel License Application Form;
   (b) Submit the completed form to the department during the month of November; and
   (c) Include the license fee as stipulated in 301 KAR 3:022.
(2) The department shall issue a mussel license only to a person who has previously purchased a mussel license between January 1, 2000 (2004) and November 10, 2005.
(3) Mussel license holders who purchased a mussel license between January 1, 2000 (2004) and November 10, 2005 shall not be allowed to transfer this mussel license buying privilege to another person. (not issue more than 100 mussel licenses for a license year).
(a) If the number of applications exceeds 100, the department shall:
   1. Issue licenses to current mussel license holders; and
   2. Conduct a random drawing of the remaining applications until 100 licenses have been issued;
(b) If the number of applications is fewer than 100, the department shall grant licenses to:
   1. Applicants who apply before November 30, and
   2. Persons applying after November 30 on a first-come, first-served basis until 100 licenses have been issued.

Section 6. (1) A person shall not mussel:
(a) Within 200 yards below a dam; or
(b) Except in the waters specified in subsection (2) of this section.
(2) The following waters shall be open to musselning:
(a) Kentucky Lake, except embayments as defined by the Kentucky Lake Musselining Waters Map shall be open to mussel brailing until February 28, 2011, or until an alternative mussel harvest method is established by the department;
(b) Barkley Lake, except embayments as defined by the Barkley Lake Musselining Waters Map shall be open to mussel brailing until February 28, 2011, or until an alternative mussel harvest method is established by the department;
(c) Tennessee River downstream from river mile seventeen and eight-tenths (17.8) shall be open to mussel brailing until February 28, 2016, or until an alternative mussel harvest method is established by the department;
(d) Cumberland River downstream from the U.S. Highway 62 bridge shall be open to mussel brailing until February 28, 2016, or until an alternative mussel harvest method is established by the department;
(e) Ohio River shall be open to mussel brailing until February 28, 2016, or until an alternative mussel harvest method is established by the department, except between river miles:
   1. 416 and 419;
   2. 955.0 and 974.1;
   3. 397.0 at Ruggles Run, Kentucky and 388.7 at Cummins Branch, Kentucky; and
   4. 394.6 at Lindseys Creek, Ohio, and 397.1 at Old Ferry Landing, Manchester, Ohio;
(f) Green River downstream from the western boundary of Mammoth Cave National Park, except from lock and dam #5 downstream four and eight-tenths (4.8) miles to the confluence of Ivy Creek shall be open to mussel brailing until February 28, 2011, or until an alternative mussel harvest method is established by the department;
(g) Barren River downstream from Barren River Lake dam, except from lock and dam #1 downstream three and five-tenths (3.5) miles to the confluence with Mortar Branch shall be open to mussel brailing until February 28, 2011, or until an alternative mussel harvest method is established by the department;
(h) Kentucky River downstream from Beattyville shall be open to mussel brailing until February 28, 2011, or until an alternative mussel harvest method is established by the department.

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Section 7. (1) Except as otherwise stipulated in this section, a person shall not mussels except between 6 a.m. and 6 p.m.

(c) 6 a.m. to 3:30 p.m. during December through February; and

(b) 8 a.m. to 6 p.m. during the remainder of the year on the following waters:
   1. The west side of:
   a. Kentucky Lake; or
   b. Barkley Lake;
   2. The canal connecting Kentucky and Barkley Lakes; and
   3. From Cumberland River mile 36.2 at Big Horse Ford Light downstream to Barkley Lake Dam.

Section 8. A person may mussels year-round, except:

(a) On Kentucky Lake:
   1. In March;
   2. From the Saturday before Memorial Day through Labor Day.

(b) On Barkley Lake, from the Saturday before Memorial Day through September 30.

(c) On Kentucky Lake or Barkley Lake, a person shall not mussels on:
   (a) Memorial Day;
   (b) Independence Day; or
   (c) Labor Day.

Section 9. (1) A person shall:

(a) Determine the size of a mussel by attempting to pass the mussel through a circular opening with an inside diameter equal to the specified size limit.

(b) Immediately return a mussel which passes through the circular opening to the mussel bed from which it was taken.

(c) The mussel size limit shall be two and one-half (2 1/2) inches except as specified in this section.

(d) There shall not be a size limit on the Asiatic clam (Corbicula sp.)

(e) The size limit for the following species shall be:
   (a) Washboard mussel, Megalonaias nervosa: Four (4) inches.
   (b) Three-and-thirteen-sixteenths (3-13/16) inches from March 1, 2000 through February 28, 2001.
   (c) Three and seven-eighths (3-7/8) inches from March 1, 2001 until February 28, 2002.
   (d) Three and fifteen-sixteenths (3-15/16) inches from March 1, 2002 until February 28, 2003; and
   (e) Four (4) inches thereafter.

(f) Three-and-eighteen-sixteenths (3-18/16) inches, Ambloplita picata: Two and three-fourths (2 3/4) inches.

(g) A person:
   (a) May possess mussels that were of legal size when harvested, but which fall below the increased size limits as specified in this section, until the last day of February after the date of the size limit increases.
   (b) Shall not possess undersized shells while on the water, no matter when the shells were taken.

Section 10. A person shall not:

(a) Mussels, except by brail.

(b) Use or possess:
   (a) On the water:
      1. A brail longer than sixteen (16) feet;
      2. More than two (2) brails;
   3. A brail hook:
      a. Made of wire smaller than fourteen (14) gauge; or
      b. With a prong larger than one and one-fourth (1 1/4) inch, measured from the tip of the point to where the prongs are joined.

(c) On a licensed brail boat:
   1. A dredge; or
   2. A compressed air tank.

Section 11. (1) A mussels holder shall submit an annual written report to the department:

(a) By December 31 of each year;

(b) On a form provided by the department furnishing the following information:
   1. Name, address and mussels license number;
   2. Dates of brailing activity;
   3. Waters brailed;
   4. Name or category of mussels taken;
   5. Weight of each type or category;
   6. Price received per pound of each type or category;
   7. Total value of mussels sold;
   8. Name and license number of buyer who bought mussels.

(c) The department shall not renew the license of a person who does not submit a complete report.

Section 12. (1) A mussels buyer shall:

(a) Complete a mussels transaction report form each time he acquires a mussels.

(b) Use forms in sequential order.

(c) Write on voided forms:
   1. The word "void;"
   2. His mussels buyer's license number;
   3. The current date; and
   4. His signature.

(d) Mail completed forms, including voided forms:
   1. To the department;
   2. In time to arrive on the fifteenth of each month.

(e) If a shell was not acquired during a month, submit a report stating that no business was conducted.

(f) The department shall not renew the license of a mussels buyer until:
   (a) All monthly forms are received; and
   (b) The information required on the form is provided.

Section 13. A mussels designated as endangered shall not be taken.

Section 14. Incorporation by Reference. (1) The following materials are incorporated by reference:

(a) Kentucky Lake Mussels Waters Map, 1993;
(b) Barkley Lake Mussels Waters Map, 1993;
(c) Mussels License Application Form, 1998;
(d) Mussels Harvester Report Form, 1990;

(2) List of commercial mussels fisherman who purchased a commercial mussels license between January 1, 2000 and November 10, 2005.

(3) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Fish and Wildlife Resources, #1 Sportsman's Lane [Game-Farm Road], Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. until 4:30 p.m.

GEORGE WARD, Secretary
MARK S. CRAMER, Deputy Commissioner
VOLUME 33, NUMBER 1 – JULY 1, 2006

For DR. JONATHAN GASSETT, Commissioner
APPROVED BY AGENCY: June 14, 2006
FILED WITH LRC: June 15, 2006 at 11 a.m.

CONTACT PERSON: Rose Mack, Kentucky Department of Fish and Wildlife Resources, 1 Sportsman's Lane, Frankfort, Kentucky 40601, phone (502) 564-7109, ext. 441, fax (502) 564-0506.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Rose Mack

(a) Provide a brief summary of:
   (a) What the administrative regulation does: Establishes license requirements, seasons, size limits, waters open, and reporting requirements for commercial musseling.
   (b) The necessity of the administrative regulation: To effectively manage the commercial harvest of freshwater mussels in Kentucky.

(c) How does this administrative regulation conform to the authorizing statute? KRS 150.025(1) authorizes the department to promulgate administrative regulations governing the taking of wildlife. KRS 150.520 grants the department specific authority to regulate the taking, buying and selling of mussels and to require reporting of musseling operations.

(d) How will this administrative regulation assist in the effective administration of the statutes? This administrative regulation will carry out the purposes of KRS 150.025(1) and 150.520 by limiting the number of persons who can harvest mussels, setting seasons and size limits on mussels, where and how mussels can be harvested, reporting and harvest requirements for persons that harvest mussels in Kentucky's waters, and regulates the buying and selling of mussels. This will ensure the conservation of freshwater mussels in Kentucky.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
   (a) What the amendment does: Commercial harvest of mussels by bailing in Green, Barren, Kentucky, Rough, and Rolling Fork rivers and Kentucky and Barkley lakes will remain open until February 28, 2011 or until an alternative mussel harvest method is established by the department. Harvest of mussels by bail in the Ohio River and lower sections of the Tennessee and Cumberland rivers will remain open until February 28, 2016 or until an alternative method is established by the department. It also restricts the licensing and the sale of the non-transferable mussel license to those persons that had previously purchased a license between January 1, 2000 and November 10, 2005.

(b) The necessity of the amendment to this administrative regulation: To effectively manage the freshwater mussel resources in Kentucky. This amendment will reduce the potential harvest of Federal threatened and endangered mussel species found in Kentucky. It also allows persons that currently bai for mussels in Kentucky to continue for a defined period of time or until an alternative method is established.

(c) How does the amendment conform to the authorizing statutes? See (1) (c) above.

(d) How will the amendment assist in the effective administration of the statutes? See (1) (d) above.

(3) List the type and number of individuals, businesses, organizations or state and local governments that will be affected: Persons who commercially harvest freshwater mussels from the waters of the Commonwealth.

(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: Commercial mussel license holders have significantly declined in Kentucky from over 800 license holders in 1990 to 16 in 2005. This decline is market driven, since the demand for commercially-caught mussels has declined. Low numbers of shells are harvested per license holder. Musseling will be permitted to continue for a limited time on the primary water bodies where mussel harvest occurs. Therefore, the limited numbers of mussel license holders have been provided a fair and unbiased method to close this fishery to the brailling method or until an alternative harvest method is found.

(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.

(c) 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 including water patrol.

(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: It will not be necessary to increase a fee or funding to implement this administrative regulation.

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

TIERING: Is tiering applied? Tiering was not used, because all people who commercially harvest mussels from the waters of Kentucky will be treated the same.

EDUCATION CABINET
Board of Education
Department of Education
(Amended After Comments)

704 KAR 3:303. Required program of studies.

RELATES TO: KRS 156.070, 156.160, 158.451, 160.290
STATUTORY AUTHORITY: KRS 156.070, 156.160
NEECESSITY, FUNCTION, AND CONFORMITY: KRS 156.160 requires the Kentucky Board of Education to establish courses of study for the different grades and kinds of common schools, with the courses of study to comply with the expected outcomes for students and schools established in KRS 158.451. KRS 156.070(1) requires the Kentucky Board of Education to manage and control the common schools and all programs operated in the schools. KRS 160.290 authorizes local boards of education to provide for courses and other services for students consistent with the administrative regulations of the Kentucky Board of Education. This administrative regulation incorporates by reference the program of studies of which contains the general courses for use in Kentucky's common schools.


(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Curriculum [and Assessment] Development, Department of Education, 18th Floor, Capital Plaza Tower, Frankfort, Monday through Friday, 8 a.m. through 4:30 p.m.

GENE WILHOIT, Commissioner
KEITH TRAVIS, Chair
APPROVED BY AGENCY: June 14, 2006
FILED WITH LRC: June 14, 2006 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.

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 incorporates by reference the "Program of Studies
for Kentucky Schools Grades P-12", which contains the minimum content requirements across all content areas students shall meet before graduating from a Kentucky public high school.

(b) The necessity of this administrative regulation: This administrative regulation was necessary to implement provisions of KRS 156.160.

(c) How this administrative regulation conforms to the content of the authorizing statute: This administrative regulation incorporates by reference the document that provides the specific minimum curriculum content requirements for Kentucky schools.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation incorporates by reference the document that provides the specific minimum curriculum content requirements for Kentucky schools.

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

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

(b) The necessity of the amendment to this administrative regulation: Changes to the Program of Studies document are necessary due to changes to the minimum requirements for high school graduation.

(c) How the amendment conforms to the content of the authorizing statute: KRS 156.160 requires the Kentucky Board of Education to establish courses of study to comply with the expected outcomes for students and schools established in KRS 158.6451.

(d) How the amendment will assist in the effective administration of the statutes: The Program of Studies will assist schools in developing instructional courses primary through grade 12 that contain the minimum content required for high school graduation.

(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: Districts will assist schools in aligning the educational programs in schools to meet the requirements in the Program of Studies.

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

(a) Initially: There will be no additional costs to the agency to implement this administrative regulation.

(b) On a continuing basis: There will be no additional costs to the agency to implement this administrative regulation.

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

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Community Based Services
Division of Policy Development
(Amended After Comments)


RELATES TO: KRS 45.237, 205.211 [206.234], 205.237[-45 C.F.R. 30.16, 266.2, 206.61 et seq.]

STATUTORY AUTHORITY: KRS Chapter 13B, 194A 010(2), 194A050(1), 205.231(2), 42 U.S.C. 601 to 619 [194A.060(4)]

205.231, 45 C.F.R. 205.10, 42 U.S.C. 601 et seq., EO 86-862

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A 010(2) requires the Cabinet for Health and Family Services to administer income-supplement programs that protect, develop, preserve, and maintain families and children in the Commonwealth. KRS 194A 050(1) requires the secretary to promulgate administrative regulations necessary to implement programs mandated by federal law or to qualify for the receipt of federal funds and necessary to cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. 42 U.S.C. 601 to 619 requires states receiving Temporary Assistance for Needy Families (TANF) grants to provide a grievance procedure for TANF participants and outlines this procedure in the TANF state plan. KRS Chapter 13B establishes the hearing process to be followed in the Commonwealth, and KRS 205.231(5) allows the cabinet to promulgate administrative regulations for the hearing process. This administrative regulation establishes the requirements to be followed in conducting a hearing related to the Kentucky Transitional Assistance Program (KTAP), the Low Income Home Energy Assistance Program (LIHEAP), or the State Supplementation Program.

Section 1. Hearing Information. A participant shall be informed of:

(1) The right to a hearing:

(a) Orally, at the time of application; and

(b) In writing:

1. At the time of application; and

2. When an action is taken which affects the benefits of the participant.

(2) The procedures for requesting a hearing, as defined in Section 3 of this administrative regulation;

(3) Who may represent the participant in a hearing as defined in Section 2 of this administrative regulation.

Section 2. Hearing Representation. If a participant chooses to designate a representative for a hearing, the authorized representative may be:

(1) Legal counsel;

(2) A relative;

(3) A friend; or

(4) An individual acting on behalf of the participant.

Section 3. Request for a Hearing. (1) An individual shall request a hearing by:

(a) Completing and submitting a PAFS-78, "Request for Hearing, Appeal, or Withdrawal";

(b) Submitting a written request; or

(c) Nocking an oral request.

(2) The hearing request may be:

(a) Submitted to the local department for community based services office;

(b) Sent to the Cabinet for Health and Family Services, Division of Administrative Hearings, Families and Children Administrative Hearings Branch, 275 East Main, Frankfort, Kentucky 40621;

(c) The reason for the hearing shall be included in the hearing request.

Section 4. Timeframe for Hearing Request. (1) A written or oral request for a hearing shall be considered timely if received by the cabinet within:

(a) Forty (40) days of the date of the advance notice of adverse action;

(b) Thirty (30) days of the notice of:

1. Denial of an application; or

2. Decrease or discontinuance of an active case; or

(c) The time period the action is pending if the hearing issue is a delay in action.

(2) If a hearing officer determines an appellant meets good cause criteria in accordance with subsection 3 of this section, the appellant may be granted an additional thirty (30) days to submit a hearing request.

(3) An appellant may be granted good cause by the cabinet:

(a) For:
1. A delay in requesting a hearing;
2. A delay in requesting a continuation of benefits;
3. Failure to appear for a hearing; or
4. Postponement of a scheduled hearing; and
(b) If the appellant:
1. Was away from home during the entire filing period;
2. is unable to read or to comprehend the right to request a hearing on an adverse action notice;
3. Moved, resulting in delay in receiving or failure to receive the adverse action notice;
4. A household member had a serious illness; or
5. was not at fault for the delay of the request, as determined by the hearing officer.

Section 5. Continuation of Assistance Program Benefits. (1) When a hearing is requested, benefits shall remain intact or reduced pending the issuance of a final order unless the appellant requests a continuation of benefits. 
(2) Benefits shall be reinstated to the benefit level that was received prior to the adverse action being taken if the request for a continuation of benefits is received within:
(a) Ten (10) days of the date on the notice of adverse action; or
(b) Twenty (20) days of the date on the notice of adverse action or notice if the reason for delay meets the good cause criteria contained in Section 4(3) of this administrative regulation. 
(3) If the program benefit has been reduced or discontinued as a result of a change in the law, regulation, or policy of the cabinet, subsection (2) of this section shall not apply.
(4) If the action taken by the agency is upheld, continued, or reinstated benefits shall be:
(a) Considered overpayments as defined in KRS 205.211; and
(b) Collected in accordance with KRS 45.237.

Section 6. Hearing Notification. (1) The Division of Administrative Hearings, Families and Children Administrative Hearings Branch shall acknowledge a hearing request.
(2) In accordance with KRS 13B.050, the notice of the hearing shall contain information regarding the:
(a) Hearing process, including the right to case record review prior to the hearing;
(b) Right to representation; and
(c) Availability of free representation by legal aid or assistance from other organizations within the community.
(3) Unless an appellant's request for an expedited hearing is granted, written notice shall be provided at least ten (10) days prior to the date of the hearing to permit adequate preparation of the case.

Section 7. Withdrawal or Abandonment of Request. (1) The appellant may withdraw a hearing request prior to the:
(a) Hearing; or
(b) Final order being issued if the hearing has already been conducted.
(2) The cabinet shall consider a hearing request abandoned if the appellant or authorized representative fails to:
(a) Appear for the scheduled hearing without notifying the cabinet prior to the hearing; and
(b) Establish good cause for failure to appear, in accordance with the criteria specified in Section 4(3) of this administrative regulation, within ten (10) days of the scheduled hearing date.

Section 8. Appellant's Hearing Rights. (1) In addition to the rights described in Section 6(2) of this administrative regulation, the appellant shall have the right to submit additional information in support of the claim.
(2) The appellant shall have the right to a medical assessment at the expense of this cabinet by a person not associated with the original action if the hearing:
(a) Involves medical issues; and
(b) Officer considers it necessary.
(3) If a request for a medical assessment at cabinet expense is received and denied by the hearing officer, the denial shall:
(a) Be in writing; and
(b) Specify the reason for the denial.

Section 9. Postponement of a Hearing. (1) An appellant shall be entitled to a postponement of a hearing if the:
(a) Request for the postponement is made prior to the hearing; and
(b) Need for the delay is due to an essential reason beyond the control of the appellant in accordance with good cause criteria contained in Section 4(3) of this administrative regulation.
(2) The hearing officer shall decide if a hearing is postponed.
(3) The postponement of a hearing shall not exceed thirty (30) days from the date of the request for postponement.

Section 10. Conduct of a Hearing. (1) A hearing shall be:
(a) Scheduled by the hearing officer, and
(b) Conducted in accordance with KRS 13B.080 and 13B.090.

(2) A hearing officer shall make an effort to conduct a hearing at a location within the state that is convenient for the appellant and other parties involved.
(3) To secure all pertinent information on the issue, the hearing officer may:
(a) Examine each party or witness who appears; and
(b) If necessary, collect additional evidence from a party.
(4) Parties to a telephonic hearing shall:
(a) Submit all available documentary evidence to be used during the hearing to the hearing officer and the opposing party prior to the hearing being convened; and
(b) Within the timeframe specified by the hearing officer, mail the hearing officer and opposing party any documents or written materials that:
1. Are introduced as evidence into the hearing record, and
2. Have not been supplied to the opposing party prior to the hearing.

(5) If evidence addressed in subsection (4) of this section is not provided to the hearing officer and the opposing party, the evidence may be excluded from the hearing record.

Section 11. Recommended Order. (1) After the hearing has concluded, the hearing officer shall draft a recommended order which:
(a) Summarizes the facts of the case;
(b) Specifies the:
1. Reasons for the recommended order; and
2. Address to which a party in the hearing may send an exception to the recommended order; and
(c) Identifies the:
1. Findings of fact;
2. Conclusions of law;
3. Supporting evidence; and
4. Applicable state and federal regulations.
(2) A copy of the recommended order shall be sent to:
(a) Appellant or representative; and
(b) Local Department for Community Based Services office.

Section 12. Written Exceptions and Rebuttal. (1) If a party to a hearing disagrees with the recommended order, the party may file a written exception with the Commissioner of the Department for Community Based Services or designee.
(2) A written exceptions or rebuttal shall:
(a) Be filed within fifteen (15) days of the date the recommended order was mailed;
(b) Be based on facts and evidence presented at the hearing; and
(c) Not refer to evidence that was not introduced at the hearing;
(2) Be sent to each other party involved in the hearing.

Section 13. Final Order. (1) Prior to issuing a final order, the commissioner or designee shall consider the complete record of the hearing in accordance with KRS 13B.120.
(2) In accordance with KRS 13B.120, the commissioner or designee may:
(a) Adopt the recommended order as the final order;
(b) Reject or modify the recommended order, in whole or in
part or
3. unless the issue is remanded to the hearing officer for further action, the commissioner or designee shall issue a final order;
(a) within forty-five (45) days of receipt of the recommended order; and
(b) send a copy of the final order to each party involved in the hearing in accordance with KRS 138.120.
4. If the final order differs from the recommended order, it shall include information and documentation in accordance with KRS 138.120.

Section 14. Appeal of the Final Order. (1) A participant or authorized representative may appeal a final order by filing an appeal to an appeal board appointed in accordance with KRS 205.231(3).
(2) A request for appeal of a final order shall be submitted:
(a) orally; or
(b) in writing; and
(c) to the:
1. Local department for community based services office; or
2. Appeal board.
(3) The date a request is received by the cabinet is considered the date the request is filed.
(4) An appeal request shall be considered timely if the request is received within:
(a) twenty (20) days of the date the final order was mailed; or
(b) thirty (30) days of the date the final order was mailed if good cause, in accordance with Section 4(3) of this administrative regulation, is met.

Section 15. Appellant's Rights Prior to Appeal Board Consideration. (1) An appeal to the appeal board shall be acknowledged in writing to the appellant and authorized representative.
(2) The acknowledgment shall:
(a) Advise the appellant that:
1. A brief may be filed; or
2. Upon the appeal board approval, new or additional evidence may be submitted; and
(b) State the tentative date on which the board shall consider the appeal.

Section 16. Appeal Board Review. (1) The appeal board shall consider:
(a) the record of the hearing; and
(b) any new evidence or exhibits introduced before the appeal board in accordance with subsection (2), (3), or (4) of this section.
(2) When an appeal is being considered on the record, the parties may:
(a) Present written arguments; and
(b) At the board's discretion, be allowed to present oral arguments.
(3) If needed, the appeal board may request additional evidence to resolve the appeal.
(4) Additional evidence shall be accepted by the board after a party to the hearing has been given seven (7) days notice of the opportunity to:
(a) Object to the introduction of additional evidence; or
(b) Rebut or refute any additional evidence.

Section 17. The Appeal Board Decision. (1) In accordance with KRS 138.126, the decision of the appeal board shall be in accordance with KRS 205.231:
(a) Set forth in writing the facts on which the decision is based; and
(b) Except as provided in subsection (2) of this section, be irrevocable in respect to the issues in the individual case unless set aside through the judicial review process pursuant to KRS 138.140 and 138.160.
(2) The appeal board shall be allowed to reverse the decision in subsection (1) of this section if the following criteria are met:
(a) The correct determination of eligibility based on incapacity or disability is the only issue being considered in the appeal board decision; and
(b) Within twenty (20) days of the appeal board decision, the appellant, or household member whose incapacity or disability is the issue of the hearing, receives and provides to the appeal board an award letter for benefits based on disability including:
1. Supplemental security income;
2. Retirement, survivor, and disability insurance;
3. Federal black lung benefits; or
4. Railroad retirement benefits; or
5. Veterans Administration benefits based on 100% disability.

Section 18. Payments of Assistance. (1) Payments of assistance shall be made within ten (10) days of the receipt of a final order or a decision of the appeal board and shall include:
(a) The month of application; or
(b) If it is established that the appellant was eligible during the entire period in which assistance was withheld, a month in which incorrect action of the cabinet adversely affected the appellant.
(2) For reversals involving reduction of benefits, action shall be taken to restore benefits within ten (10) days of the receipt of a final order or a decision of the appeal board.

Section 19. Limitation of Fees. (1) The cabinet shall not be responsible for payment of attorney fees.
(2) Pursuant to KRS 205.237, an attorney representing an appellant shall not charge more than the following amounts for his services:
(a) Seventy-five (75) dollars for preparation and appearance at a hearing before a hearing officer;
(b) Seventy-five (75) dollars for preparation and presentation, including any briefs, of appeals to the appeal board;
(c) $175 for preparation and presentation, including pleadings and appearance in court, of appeals to the circuit court; or
(d) $300 for preparatory work, briefs, and other materials related to an appeal to the Court of Appeals.
(3) The cabinet shall approve the amount of a fee, if the:
(a) Appellant and legal counsel agree to the fee; and
(b) Fee is within the maximums specified in subsection (2) of this section.
(4) Collection of an attorney fee shall:
(a) Be the responsibility of the counsel or agent; and
(b) Not be deducted from the benefits provided to an appellant.

(2) The 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 40601, Monday through Friday, 8 a.m. to 4:30 p.m. [Executive Order 96-662, effective July 2, 1996, reorganized the Cabinet for Human Resources and placed the Department for Social Insurance and its programs under the Cabinet for Health and Family Services. The Cabinet for Health and Family Services shall provide for a system of hearings to be available to any applicant or recipient of an assistance program who is dissatisfied with any action or inaction on the part of the cabinet. This administrative regulation sets forth the methods by which the hearing requirement is fulfilled for Aid to Families with Dependent Children now called the Kentucky Transitional Assistance Program (K-TAP), the Home Energy Assistance Program, and the State Supplementary Program.]

Section 4—Informing the Appellant or Recipient of His Rights. (1) Each applicant or recipient shall be informed of his right to a hearing:
(a) Orally and in writing when application is made; and
(b) in writing when an action is taken affecting his claim in accordance with KRS 138.060.
(2) Each applicant or recipient shall be informed of:
(a) The remedy by which he may obtain a hearing; and
(b) That he may be represented by:
1. An authorized representative who may be:
   a. Legal counsel;
   b. A relative;
   c. A friend; or
(3) The notice to an applicant or recipient shall include:
(a) The hearing officer's name and address;
(b) The time and place of the hearing;
(c) The right to bring counsel at the hearing;
(d) The right to bring witnesses.

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Section 2. Request for a Hearing.-(1) An applicant or recipient or an authorized representative-acting on his behalf, may request a hearing by filing a request with the Department for Community-Based Services at either:
(a) The local office; or
(b) The central office.
(2) The applicant or recipient shall clearly indicate a desire for a hearing by submitting a statement:
(a) In written form; or
(b) Oral, later submitted in writing by the applicant or recipient.
(3) A written request for a hearing may be sent to the Cabinet for Health and Family Services, Division of Administrative Hearings, 275 East Main, Frankfort, Kentucky 40621.

Section 3. Time Limitation for Hearing Request—Regarding Assistance Payments.-(1) To be considered timely, a written or oral request from an applicant or recipient shall be received by the department within:
(a) Forty (40) days of the date of the advance notice of adverse action or
(b) Thirty (30) days of the date of:
1. Denial of an application; or
2. Decrease or discontinuance of an existing case; or
(c) The time period the action is pending if the hearing issue is delay in action.
(2) Up to an additional thirty (30) days for requesting a hearing may be granted if it is determined by the hearing officer that the delay was for good cause in accordance with the following criteria:
(a) The applicant or recipient was away from home during the entire filing period; or
(b) The applicant or recipient is unable to read or comprehend the right to request a hearing on:
1. Notice of adverse action; or
2. Notice of decrease or discontinuance; or
(c) The applicant or recipient moved resulting in delay in receiving or failure to receive the:
1. Notice of adverse action; or
2. Notice of decrease or discontinuance; or
(d) Serious illness of the applicant or recipient; or
(e) The reason for the delay was no fault of the applicant or recipient, as determined by the hearing officer.

Section 4. Continuation of Assistance Program Benefits.-(1) Assistance shall be continued through the month in which the hearing officer's decision is rendered if the request:
(a) Results from dissatisfaction regarding a proposed discontinuance, suspension, or decrease; and
(b) Is received within ten (10) days of the date on which:
1. Advance notice of adverse action; or
2. Notice of decrease or discontinuance.
(2) Assistance shall be reinstated and continued through the month in which the hearing officer's decision is rendered if the request:
(a) Is received within twenty (20) days of the date on which:
1. Advance notice of adverse action; or
2. Notice of decrease or discontinuance; and
(b) The reason for the delay meets the good cause criteria contained in Section 3 of this administrative regulation.
(3) Subsections (1) and (2) of this section shall not apply if the program benefit has been reduced or discontinued as a result of a change in law, regulation, or policy of the cabinet.
(4) Continued or reinstated benefits shall be considered overpayments if the agency decision is upheld.
(5) If the applicant or recipient requests the discontinuance, suspension, or decrease in assistance be in effect pending the hearing officer's decision, assistance shall not be discontinued or reinstated through the month in which the hearing officer's decision is rendered.

Section 5. Acknowledgment of the Request.-(1) A hearing request shall be acknowledged by the Division of Administrative Hearings.
(2) The acknowledgment letter shall contain information regarding:
(a) The hearing process, including the right to case record review prior to the hearing;
(b) The right to representation; and
(c) A statement that the local office can provide information regarding the availability of free representation by legal aid or a welfare rights organization within the community.
(3) Subsequent notification shall comply with the requirements of KRS 138.050.
(4) All parties to the hearing shall be provided at least twenty (20) days timely notice of the date of the hearing to permit adequate preparation of the case.
(5) The applicant or recipient may request less timely notice of the date set for the hearing to expedite the scheduling of the hearing.
(6) A hearing complying with the requirements of KRS Chapter 428 shall be scheduled on a timely basis to assure that no more than ninety (90) days shall elapse from the date of the request to the date of the decision.

Section 6. Withdrawal or Abandonment of Request.—(1) The applicant or recipient may withdraw his request for a hearing prior to release of the hearing officer's decision, but he shall be granted the opportunity to discuss the withdrawal with his legal counsel or representative, prior to finalizing the action to withdraw.
(2) A hearing request shall be considered abandoned if the applicant or recipient fails without prior notification to report for the hearing.
(3) A hearing request shall not be considered as abandoned without the applicant or recipient furnishing a reasonable explanation for the delay.
(4) The time period to request a hearing is established that the failure was for good cause in accordance with good cause criteria contained in Section 3 of this administrative regulation.

Section 7. Applicant's or Recipient's Rights Prior to a Hearing.—(1) An applicant or recipient shall receive notice consistent with KRS 138.050, including:
(a) His right to legal counsel or other representation;
(b) The right to review the case record relating to the issue; and
(c) The right to submit additional information in support of the claim.
(2) When the hearing involves medical issues, a medical assessment by other than the person or persons involved in the original decision shall be obtained at cabinet expense if the hearing officer considers it necessary.
(3) If a medical assessment at cabinet expense is requested by the applicant or recipient, the decision of the hearing officer, the reason for denial shall be set forth in writing.

Section 8. Postponement of a Hearing.—(1) The applicant or recipient shall be entitled to a postponement of a hearing if:
(a) The request for the delay is made prior to the hearing; and
(b) The request is based on an essential reason beyond the control of the applicant or recipient in accordance with good cause criteria contained in Section 3 of this administrative regulation.
(2) The decision to grant the postponement shall be made by the hearing officer.
(3) The postponement of the hearing shall not exceed thirty (30) days from the date of the request.

Section 9. Corrective Action for Assistance Program Benefits.—(1) If after a review of the case record, but prior to scheduling a hearing, the hearing officer determines that action taken or proposed to be taken is incorrect, he shall authorize corrective action in the form of:
(a) Assistance to the applicant or recipient who would have been entitled but for the incorrect decision; or
(b) If the issue was a proposed action, continuing assistance.
(2) The applicant or recipient then shall be given the opportunity to withdraw the hearing request, but the hearing shall be scheduled if the applicant or recipient wishes to pursue the request.

Section 10.—Conduct of a Hearing. (1) The hearing shall be conducted in accordance with the requirements of KRS 138.140 and 138.160.

(2) The hearing shall be conducted in state where the applicant or recipient may attend without undue inconvenience.

(3) If necessary to secure full information on the issue, the hearing officer may examine each party who appears and his witnesses.

(4) The hearing officer may schedule a hearing and take additional evidence as is deemed necessary.

(5) (a) Parties to a telephonic hearing who wish to introduce documents or written materials not yet supplied to the opposing party into the record at the hearing shall immediately mail copies of the documents to the hearing officer and to the opposing party.

(b) All parties to the telephonic hearing shall submit all available documentary evidence to be used during the hearing to the hearing officer and the opposing party prior to convening of the hearing.

(c) Failure to provide both the hearing officer and the opposing party with copies of evidence referenced in paragraphs (a) and (b) of this subsection may result in its being excluded from the record.

Section 11.—The Decision. (1) After the hearing is concluded, the hearing officer shall set forth in writing his findings of fact and conclusions of law:

(a) Specifying the reasons for the decision; and

(b) Identifying the supporting evidence and regulations.

(2) A copy of the decision shall be mailed to:

(a) The applicant or recipient and his representative; and

(b) The local office of the Department for Community-Based Services.

Section 12.—Appeal from Decision of Hearing Officer. (1) Any applicant or recipient or his authorized representative wishing to appeal the decision of a hearing officer may do so by filing an appeal to an appeal board appointed in accordance with KRS 205.231(3).

(2) The appeal request shall be considered timely when an oral or written request is received in a local office or the Division of Administrative Hearings within twenty (20) days of the date on which the hearing officer's decision was mailed; or

(3) If the good cause criteria in Section 3 of this administrative regulation is met, an appeal request received within thirty (30) days of the hearing officer's decision shall be considered timely.

(4) The request shall be:

(a) Filed in writing or orally, later reduced to writing; and

(b) Considered filed on the day it is received.

Section 13.—Applicant's or Recipient's Rights Prior to Appeal Board Consideration. (1) An appeal to the appeal board shall be acknowledged in writing to the applicant or recipient and his authorized representative.

(2) The acknowledgment shall:

(a) Offer the opportunity to file a brief or submit new and additional proof; and

(b) State the tentative date on which the board will consider the appeal.

Section 14.—Appeal Board Review. (1) An appeal to the appeal board shall be considered upon:

(a) The records of the department; and

(b) The evidence or exhibits introduced before the hearing officer unless the applicant or recipient specifically requests permission to file additional proof.

(2) When an appeal is being considered on the record, the parties may:

(a) Present written arguments; and

(b) At the board's discretion, be allowed to present oral arguments.

(3) If needed, the appeal board may direct the taking of additional evidence to resolve the appeal.

(4) Evidence shall be taken by the board after seven (7) days notice to the parties, giving them the opportunity:

(a) To object to introduction of additional evidence; or

(b) To rebut or refute any additional evidence.

Section 15.—The Appeal Board Decision. (1) The decision of the appeal board, duly signed by members of the board, shall:

(a) Set forth in writing the facts on which the decision is based; and

(b) Except as provided in subsection (2) of this section, be irrevocable in respect to the issues in the individual case unless set aside through the judicial review process pursuant to KRS 138.140 and 138.160.

(2) The appeal board shall be allowed to reverse the decision in subsection (1) of this section if the following criteria are met:

(a) The correct determination of eligibility based on incapacity or disability is the only issue being considered in the appeal board decision; and

(b) Within twenty (20) days of the appeal board decision, the applicant or recipient whose incapacity or disability is the issue of the hearing receives and provides to the appeal board an award letter for benefits based on disability including:

1. Supplemental security income;

2. Retirement survivors and disability insurance;

3. Federal black lung benefits;

4. Railroad retirement benefits; or

5. Veteran Administration benefits based on 100 percent disability.

Section 16.—Payments of Assistance. (1) Payments of assistance to carry out decisions of hearing officers or the appeal board shall be made promptly and shall include:

(a) The month of application; or

(b) If it is established that the applicant or recipient was eligible during the entire period in which assistance was withheld, the month in which incorrect action of the cabinet adversely affected the applicant or recipient.

(2) For reversals involving reduction of benefits, action shall be taken to restore benefits within ten (10) days of the receipt of the hearing decision.

Section 17.—Limitation of Fees. (1) The cabinet shall not be responsible for payment of attorney fees.

(2) An attorney representing an applicant or recipient shall not charge more than the following amounts for his services:

(a) Seventy-five (75) dollars for preparation and appearance at hearing before a hearing officer;

(b) Seventy-five (75) dollars for preparation and presentation, including any briefs, of appeals to the appeal board;

(c) $175 for preparation and presentation, including pleadings and appearance in court, of appeals to the circuit court;

(d) $500 for preparatory work and briefs and all other matters incident to appeals to the Court of Appeals;

(e) The fee agreed to by the representative and his client within the above maximums shall be deemed to have the approval of the cabinet.

(4) Collection of an attorney fee shall not be the responsibility of the counsel or agent. The fee shall not be deducted from the benefit check of an applicant or recipient.

Section 18.—Special Provisions for the Kentucky Works Program. (1) A participant in the Kentucky Works Program may request a hearing for the resolution of a complaint regarding:

(a) A working condition; or

(b) The wage rate used to calculate the hours of participation required by the program.

(2) A participant in the Kentucky Works Program may appeal a hearingdecision regarding an issue in subsection (1) of this section in accordance with KRS 138.140 and 138.160.

Section 19.—Incorporation by Reference. (1) "PARS 78—Request for Hearing, Appeal, or Withdrawal", (June 1997 Edition),
Cabinet for Health and Family Services, is incorporated by reference.

(2) It may be inspected, copied, or obtained 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.

MARK D. BIRDWHISTELL, Secretary
MIKE BURNSIDE, Deputy Secretary
TOM EMBERTON, Jr., Commissioner
APPROVED BY AGENCY: June 13, 2006
FILED WITH LRC: June 13, 2006 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) 564-7753.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: David Gayle
(1) Provide a brief summary of:
(a) What the administrative regulation does: This administrative regulation establishes hearing requirements to be used by the cabinet in the administration of public assistance programs.
(b) The necessity of this administrative regulation: This administrative regulation is needed to establish uniform standards for conducting hearings regarding public assistance programs.
(c) How this administrative regulation conforms to the content of the enabling statutes: The cabinet has responsibility under KRS 205.231 to provide a hearing system for public assistance program applicants and recipients, and 42 U.S.C. 601 to 619 requires each state to outline their grievance procedure for TANF participants in their state plan.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes the requirements to be used by the cabinet in conducting a public assistance program hearing.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this administrative regulation:
This amendment will redefine the hearing process in terms of a recommended order, written exceptions, and final order, in accordance with KRS Chapter 13B.
(b) The necessity of the amendment to this administrative regulation: This amendment is necessary in order for the regulation to match the recent changes in public assistance program hearings. The changes were implemented to comply with KRS Chapter 13B.
(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to 42 U.S.C. 601 to 619 and KRS 205.231 by establishing the hearing requirements used by the cabinet in the administration of public assistance programs.
(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation set the guidelines to be followed in conducting a hearing related to a public assistance program.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All Kentucky Transitional Assistance Program (K-TAP), Low-Income Heating and Energy Assistance Program (LI-HEAP), and State Supplementation applicants and recipients in the Commonwealth will be affected by this administrative regulation. The cabinet conducts approximately 30 public assistance program hearings each month.
(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 provide public assistance program participants and workers the option to file exceptions or rebuttals to a hearing recommendation before the final order is entered. This is a recourse that was not available under the previous public assistance hearing process.
(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: No additional cost to the cabinet.
(b) On a continuing basis: No additional cost to the cabinet.
(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funding will be State General Funds and Federal Transitional Assistance for Needy Families and Low-Income Heating and Energy Assistance Program funds. The funding has been appropriated in the enacted budget.
(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change, if it is an amendment: There are no fees and no increase in funding established by this administrative regulation or it's amendment.
(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: In accordance with KRS 205.237, this regulation establishes the maximum rates an attorney can charge a public assistance program participant for representation or services related to the public assistance program hearing process. This amendment does not increase these fees.
(9) TIERING: Is tiering applied? No. Federal statutes mandate that the hearing process be applied in a like manner on a statewide basis.
No, tiering was not applied, as the administrative regulation will be applied in a like manner on a statewide basis.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the Federal mandate. 42 U.S.C. 601 to 619
2. State compliance standards. KRS 205.231 and Chapter 13B.
3. Minimum or uniform standards contained in the federal mandate. 42 U.S.C. 601 to 619
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 standards, or additional or different responsibilities or requirements. None

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Community Based Services
Division of Policy Development
(Amended After Comments)

921 KAR 3:070. Fair hearings.


STATUTORY AUTHORITY: KRS Chapter 13B, 194A.010(2), 194A.050(1); [40A.060], 7 C.F.R. 271.4, 273.15 [40A.060], 7 C.F.R. 273.15 [40A.060]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.010(2) requires the cabinet for Health and Family Services to administer income-supplement programs that protect, develop, preserve, and maintain families and children in the Commonwealth. KRS 13A.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 necessary to cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. 7 C.F.R. 271.4 requires each state to administer a Food Stamp Program. C.F.R. 273.15 requires the agency administering the Food Stamp Program to provide a hearing system for any Food Stamp Program applicant or recipient who is dissatisfied with an agency decision or action. KRS Chapter 13B establishes the hearing process to be followed in the Commonwealth. This administrative regulation establishes the fair hearing procedures used by the cabinet in the administration of the Food Stamp Program.

Section 1. (1) An opportunity for a fair hearing shall be provided to a household aggrieved by an action or inaction.
(a) On the part of the cabinet; and
(b) That affects the food stamp benefits of the household.
(2) A fair hearing shall be conducted;
(a) On a state level;
(b) By a hearing officer assigned by the Division of Administrative Hearings, Families and Children Administrative Hearings Branch; and
(c) At the local office administering the benefits of the appellant.
(i) 2. An alternate site, if the appellant:
(a) Is unable to travel to the local office; and
(b) Requests an alternate site.
(ii) If consent is obtained from each party required to testify under oath, a telephone hearing may be conducted;
(iii) If a participant or authorized representative speaks a language other than English, the cabinet shall insure that the
hearing procedures are translated and explained in accordance with 7 C.F.R. 273.15(b).

Section 2. Notification of Hearing Rights. (1) At the time of
application, a participant shall receive written notification of the;
(a) Right to a hearing;
(b) Procedures for requesting a hearing, as specified in Section
4 of this administrative regulation; and
(c) Option to designate a representative for a hearing, such as:
1. Legal counsel;
2. A relative;
3. A friend;
or
4. An individual to act on behalf of the participant.
(d) Written notification shall be provided to remind a participant
of the right to request a fair hearing when:
(i) An action is taken that affects the benefits of the participant;
or
(ii) The participant disagrees with an action taken by the cabin
net and expresses this disagreement to the cabinet.

Section 3. Criteria for a Hearing Request. (1) Within a certifica
tion period, an active household may request a fair hearing to dispute
current benefits.
(2) In accordance with the timeframes of 7 C.F.R. 273.15(a), a
food stamp household may request a hearing on any cabinet act.

Section 4. Request for a Hearing. (1) An individual shall submit
a hearing request in accordance with 921 KAR 2:055, Section 3.
(2) The request for a hearing shall clearly state the reason for
the request;
(3) If the reason for the request is unclear, the cabinet may
request additional clarification from the appellant.
(4) In accordance with 7 C.F.R. 273.15(b), a request for a
hearing shall not be interfered with or limited in any way.
(5) Upon request, and in accordance with 7 C.F.R. 273.15(i), the
appellant shall:
(a) Help an appellant with a hearing request;
and
(b) Make available, without charge, the materials necessary for
an appellant to:
1. Determine whether a hearing may be requested; or
2. Prepare for a hearing.
(c) As determined by the hearing officer, an appellant may
have the hearing process expedited in accordance with 7 C.F.R.
273.15(l)(b).

Section 5. Hearing Notification. (1) The Division of Administra
tive Hearings, Families and Children Administrative Hearings
Branch shall acknowledge a hearing request.
(2) The notice of the hearing shall:
(a) Comply with the requirements of KRS 13B 060(3);
(b) Specify the name, address, and phone number of the per
son to notify if an appellant is unable to attend the scheduled
hearing; and
(c) Specify that the hearing request shall be dismissed if an
appellant or representative fails to appear for a hearing without
good cause as specified in Section 8(2) of this administrative
regulation.
(3) Unless an appellant's request for an expedited hearing is
granted, written notice shall be provided at least ten (10) days prior
to the date of the hearing to permit adequate preparation of the
case.

Section 6. Continuation of Benefits. Unless the appellant re
quests a discontinuance of benefits, benefits shall be continued. In
accordance with 7 C.F.R. 273.15(k), pending the final order.

Section 7. Timely Action on Hearing Requests. (1) Within sixty
(60) days of a request for a fair hearing, the cabinet shall:
(a) Acknowledge the request in accordance with Section 6 of
this administrative regulation;
(b) Conduct a hearing; and
(c) Issue a final order.
(2) In accordance with 7 C.F.R. 273.15(c), benefits shall be
adjusted:
(a) Within ten (10) days of the final order; or
(b) With the next issuance following receipt of the final order.
(3) If an appellant requests a postponement of a hearing, the:
(a) Hearing shall be postponed;
(b) Postponement shall not exceed thirty (30) days from the
request for the postponement; and
(c) Time limit for issuing a final order may be extended for the
same number of days as the hearing is postponed.

Section 8. Denial or Dismissal of a Hearing Request. (1) A
hearing request shall be denied or dismissed if the:
(a) Request does not meet the criteria specified in Section 3 of
this administrative regulation;
(b) Appellant submits a written request to withdraw the hearing
request; or
(c) Appellant or representative fails to appear for the scheduled
hearing without
1. Notifying the cabinet prior to the hearing;
or
2. Establishing good cause for failure to appear as defined in
subsection (2) of this section, within ten (10) days.
(2) Good cause for the delay of a hearing request or failure to
appear at a hearing may be granted if the appellant:
(a) Was away from home during the entire filing period;
(b) Is unable to read or comprehend the notice;
(c) Moved, resulting in a delay in receiving or failure to receive
the notice;
(d) Of other household member had a serious illness;
(e) Was not at fault, as determined by the hearing official;
or
(f) Did not receive the notice.
(3) The cabinet shall notify an appellant of the dismissal of a
hearing request through the issuance of a Recommended
Order of Dismissal.

Section 9. Consolidation of Hearings. (1) A fair hearing and an
administrative disqualification hearing may be combined into a
single hearing if the:
(a) Issues of the hearings are based on the same or related
circumstances; and
(b) Appellant receives prior notice of the hearings being com
bined.
(2) If a fair hearing and an administrative disqualification hear
ing are combined:
(a) Timeframe for conducting an administrative disqualification
hearing specified in Section 2 of 921 KAR 3:060 shall be followed;
and
(b) Thirty (30) day advance notice period required by 921 KAR
3:060, Section 3 may be waived if requested by the appellant.
(3) An appellant shall lose the right to a subsequent fair hear
ing on the amount of a claim if a combined hearing is held to de
termine:
(a) The amount of the claim; and
(b) If an intentional program violation occurred.
Section 10. Group Hearings. (1) In accordance with 7 C.F.R. 273.15(e), the cabinet may respond to a series of individual requests for a fair hearing by conducting a single group hearing if:
(a) Individual issues of fact are not disputed; and
(b) The issues relate to the same state or federal law.

1. Law;
2. Regulations; or
3. Policy.

(2) The same procedures specified in this administrative regulation for an individual hearing shall apply to a group hearing.

Section 11. Agency Conference. (1) In accordance with 7 C.F.R. 273.15(d), the cabinet shall offer an agency conference to an applicant adversely affected by an action of the cabinet.

(a) The applicant shall be informed of an agency conference.
(b) An agency conference leads to an informal resolution of the dispute.
(c) The applicant makes a written withdrawal of the request for a hearing.
(d) An agency conference shall be attended by the:
   (a) Appellant's caseworker;
   (b) Local office supervisor; and
   (c) Appellant or representative.

Section 12. Rights During the Hearing. (1) During the hearing process, the applicant or representative shall be provided the opportunity to:
(a) Examine:
   (1) The contents of the case file; and
   (2) All documents and records to be used at the hearing;
(b) Present the case or have the case presented by a representative or legal counsel;
(c) Call witnesses, friends, or relatives;
(d) Present arguments without undue interference;
(e) Submit evidence to establish the pertinent facts and circumstances of the case; and
(f) Question or:
   (1) Refute testimony or evidence, and
   (2) Cross-examine an adverse witness.

(2) Upon request, a copy of the contents of the case file that are relevant to the hearing shall be provided to the applicant at no charge.

(3) Confidential information, such as the following, shall be protected from release:
(a) Names of individuals who have disclosed information about the applicant's household; and
(b) The nature or status of pending criminal proceedings.

(4) The following information shall not be introduced at the hearing or affect the recommendation of the hearing officer:
(a) Confidential information as specified in subsection 3 of this section;
(b) Documents, testimony, or records irrelevant to the hearing; and
(c) Other information for which the applicant is not provided an opportunity to contest or challenge.

Section 13. Hearing Officer. (1) The cabinet shall designate a hearing officer who:
(a) Is employed by the cabinet's Division of Administrative Hearings, Health and Family Services Administrative Hearings Branch; and
(b) Meets the criteria specified in KRS 138.040 and 7 C.F.R. 273.15(m).

(2) When conducting a hearing, a hearing officer shall:
(a) Have the authority set forth in KRS 138.080;
(b) Offer an independent medical assessment or professional evaluation from a source acceptable to both the applicant and the cabinet;
(c) Maintain a hearing record in accordance with KRS 138.130 and 22 KAR 3:050, Section 13; and
(d) Issue a recommended order as specified in Section 14 of this administrative regulation to the Commissioner of the Department of Community Based Services or designee, in accordance with KRS 138.110.

(3) The Commissioner or designee shall:
(a) Serve as the hearing authority as specified in 7 C.F.R. 273.15(n); and
(b) Issue the final order on behalf of the cabinet.

Section 14. Recommended Order. (1) After the hearing has concluded, the hearing officer shall draft a recommended order which:
(a) Summarizes the facts of the case;
(b) The rationale for the recommendation; and
(c) Identifies the:
   (1) Findings of fact;
   (2) Conclusions of law; and
   (3) Applicable state and federal regulations.

(2) A copy of the recommended order shall be sent to the:
(a) Appellant or representative; and
(b) Local Department for Community Based Services office.

Section 15. Written Exceptions and Rebuttals. (1) If a party to a hearing disagrees with the recommended order, the party may file a written exception with the commissioner or designee.

(a) A written exception or rebuttal shall:
   (1) Be filed within fifteen (15) days of the date the recommended order was mailed;
   (2) Be based on facts and evidence presented at the hearing;
   (3) Not refer to evidence that was not introduced at the hearing; and
   (4) Be sent to each other party involved in the hearing.

Section 16. Final Order. (1) Prior to issuing a final order, the commissioner or designee shall consider the complete record of the hearing in accordance with KRS 138.120.

(a) In accordance with KRS 138.120, the commissioner or designee may:
   (1) Accept the recommended order as the final order;
   (2) Reject or modify the recommended order, in whole or in part; or
   (3) Remand the issue to the hearing officer for further action.

(b) A final order shall:
   (1) Be issued in accordance with 7 C.F.R. 273.15(c);
   (2) Be sent to each party involved in the hearing, in accordance with KRS 138.120;
   (3) If the final order differs from the recommended order, it shall include information and documentation in accordance with KRS 138.120 and 7 C.F.R. 273.15(g).

Section 17. Appeal of the Final Order. (1) A participant or authorized representative may appeal a final order by filing an appeal to an appeal board appointed in accordance with KRS 205.331(3).

(a) A request for appeal of a final order shall be submitted:
   (1) On or before the date the request is received by the cabinet; and
   (2) On or before the date the request is received by the cabinet;

(b) A request for appeal of a final order shall:
   (1) Be filed on the day the request is received by the cabinet; and
   (2) Be filed on the day the request is received by the cabinet; and

(c) If the request for appeal of a final order is not submitted by the date specified in subsection (a)(1), (b)(1), or (c)(1), the request for appeal of a final order shall:
   (1) Be considered by the appeal board; and
   (2) Be considered by the appeal board; and

(d) The request for appeal of a final order shall:
   (1) Be received within twenty (20) days of the date of the final order.

Section 18. Appellant's rights prior to appeal board consideration. (1) The appeal board shall send the appellant and the authorized representative written acknowledgement of the request for appeal.

(2) The acknowledgement shall:
   (1) Be filed on the opportunity to;
(2) The disqualification hearing and fair hearing are combined. The cabinet shall follow the time frame for conducting a disqualification hearing in accordance with KRS 3.060, Section 2.

(3) - The household shall select its right to a subsequent fair hearing on the amount of the claim if a combined hearing convened for the purpose of:
(a) Setting the amount of the claim; and
(b) Determining whether or not an intentional program violation has occurred.

(4) - Upon household request, the cabinet shall allow the household to waive the thirty (30) day advance notice period required by KRS 3.060, Section 3, if a disqualification hearing and a fair hearing are combined.

(5) - A household that has already had a fair hearing on the amount of an overpayment or claim shall not be entitled to another hearing on that issue.

Section 3 - Timely Action on Hearing Requests - (1) Within sixty (60) days of a request for a fair hearing, the cabinet shall:
(a) Acknowledge the hearing request by issuance of notice of administrative hearing in accordance with 7 C.F.R. 273.16 and KRS 138.050(2) and (3);
(b) Conduct a hearing; and
(c) Issue a decision.

(2) A decision that results in an increase in household benefits shall be reflected in the allotment within ten (10) days of the receipt of the hearing decision.

(a) The cabinet shall provide a household:
1. Supplementary coupons; or
2. With an opportunity to obtain the allotment outside the normal issuance cycle.

(b) The cabinet may take longer than ten (10) days to:
1. Elect to make the decision effective in the household's normal issuance cycle; and
2. The issuance shall occur within sixty (60) days from the household's request for the hearing.

(3) A decision that results in a decrease in household benefits shall be reflected in the next scheduled issuance following receipt of the hearing decision.

Section 4 - Agency Conference - (1) The cabinet shall offer an agency conference to a household adversely affected by the cabinet's action.

(a) Optional; and
(b) Shall not delay or replace the fair hearing process.

(2) An agency conference may lead to a formal resolution of the dispute.

(a) A fair hearing shall be held unless the household makes a written withdrawal of its request for a hearing.

(b) The agency conference shall be attended by:
(a) The case worker;
(b) His supervisor; and
(c) The household member; or
(d) Representative.

(d) An agency conference for a household contesting a denial of expanded service shall be scheduled within two (2) working days, unless the household:
(a) Requests that it be scheduled later; or
(b) States that an agency conference is not wanted.

Section 5 - Group Hearings - (1) The cabinet may respond to a series of individual requests for a fair hearing by conducting a single group hearing.

(a) A hearing case may be consolidated only if:
(a) Individual issues of fact are not disputed, and
(b) The same issue is one of:
1. Federal law;
2. Regulation; or
3. Policy.

(b) In a group hearing, the same procedures specified in this administrative regulation governing an individual hearing shall be
followed.
(4) Each client shall be permitted to:
(a) Present his own case;
(b) Be represented by legal counsel; or
(c) Be represented by another spokesperson.

Section 5. Postponement of a Hearing.—(1) Upon request, a household shall be entitled to receive a postponement of the scheduled hearing.
(2) The postponement shall not exceed thirty (30) days from the date of the postponement request.
(3) The time limit for action on the decision may be extended for as many days as the hearing is postponed.

Section 6. Notification of Rights to Request a Hearing.—(1) At the time of application, the cabinet shall notify each household in writing of:
(a) Its right to a hearing;
(b) The method by which a hearing may be requested, and
(c) That its case may be presented by a household member or a representative, such as:
  1. Legal counsel;
  2. A relative;
  3. A friend; or
  4. Another spokesperson.
(2) If a household expresses to the cabinet that it disagrees with the cabinet's action, it shall be reminded in writing of its right to request a fair hearing.
(3) If there is an individual or organization available that provides free legal representation, the household shall be informed in writing of the availability of that service.

Section 7. Request for Hearings.—(1) Any household member shall have the right to request a hearing on any action by the cabinet that:
(a) Affects the participation of the household in the program, and
(b) Occurred in the prior ninety (90) days; or
(c) Denies a request for restoration of any benefits lost more than ninety (90) days but less than a year prior to the request.
(2) Within a certification period, a household may request a fair hearing to dispute its current level of benefits.

Section 8. The Cabinet's Responsibilities on Hearing Request.—(1) A request for a hearing shall be:
(a) A clear expression, oral or written, by the household or its representative;
(b) That it wishes to appeal a decision or that an opportunity to present its case to a higher authority is desired.
(2) If it is unclear from the household's request what action it wishes to appeal, the cabinet may request the household to clarify its grievance.
(3) The freedom to make a request for a hearing shall not be limited or interfered with in any way.
(4) Upon request, the cabinet shall help a household with its hearing request.
(5) If a household makes an oral request for a hearing, the cabinet shall complete the procedures necessary to start the hearing process.
(6) Households shall be advised of any free legal services available that can provide representation at the hearing.
(7) The cabinet shall expedite a hearing request from a migrant farmworker household, that plans to move from the jurisdiction of the hearing official before the hearing decision shall normally be reached.
(8) A hearing request from a migrant farmworker household shall be processed faster than other requests if necessary to enable the household to receive a decision and restoration of benefits, if the decision so indicates, before it leaves the area.

Section 10. Denial or Dismissal of a Fair Hearing Request.—The cabinet shall deny or dismiss a request for a hearing unless:
(1) The request is not received within the time period specified in Section 8 of this administrative regulation;
(2) Prior to the release of the hearing officer's decision, the client or his representative withdraws his request for a hearing at any time; or
(3) The household or his representative fails to appear to the scheduled hearing without good cause, as defined below:
(a) The household member was away from home during the entire filing period;
(b) The household member is unable to read or to comprehend the notice;
(c) The household member moved which resulted in a delay in receiving or failure to receive the timely notice;
(d) Serious illness of a household member;
(e) The delay was no fault of a household member; or
(f) The household member did not receive the notice.

Section 11. Continuation of Benefits.—(1) If a household requests a fair hearing within the period provided on the notice of adverse action, it shall be allowed to continue participation in the program on the basis authorized immediately prior to notice of adverse action:
(a) If its certification period has not expired; or
(b) If the household has not specifically waived continuation of benefits.
(2) The state agency shall consider the request timely received if:
(a) The adverse notice period ends on a weekend or holiday; and
(b) A request for a fair hearing and continuation of benefits is received the day after the weekend or holiday.
(3) If the household fails to request a hearing within the notice period for good cause, benefits shall be reinstated on the prior basis.
(4) If benefits are reduced or terminated due to a mass change, participation on the prior basis shall be reinstated if:
(a) The issue is that food stamp eligibility or benefits were improperly computed, or
(b) Federal law or regulation is being misapplied or misinterpreted by the cabinet.
(5) Once continued or reinstated, benefits shall not be reduced or terminated prior to the receipt of the official hearing decision unless:
(a) The certification expires; the household may reapply, and may be determined eligible for a new certification period with a benefit amount as determined by the cabinet;
(b) The hearing officer makes a preliminary determination in writing and at the hearing, that:
   1. The sole issue is one of federal law or regulation; and
   2. No questions of fact are involved;
(c) A change affecting the household's eligibility or benefits is the result of a mass change eligible for a new certification period with a benefit amount as determined by the cabinet;
(d) The hearing officer makes a preliminary determination in writing at the hearing, that:
   1. The issue is one of federal law or regulation; and
   2. No questions of fact are involved;
(e) The household is a migrant farmworker household, that plans to move from the jurisdiction of the hearing official before the hearing decision shall normally be reached.

Section 12. Notification of Time and Place of Hearing.—(1) The time, date and place of the hearing shall be arranged so that the hearing is accessible to the household: (2) At least ten (10) days prior to the hearing, advance written notice shall be provided to any party involved or to permit adequate preparation of the case.
(3) The household may request the hearing officer to expedite the scheduling of the hearing.
(4) The content of the notice shall comply with the requirements of KRS 13B 050 (2) and (3) and shall also:
(a) Advise the household or representative of the name, address, and phone number of the person to notify if it is not possible
for the household to attend the scheduled hearing;
(b) Specify that the cabinet shall dismiss the hearing request if the household or its representative fails to appear for the hearing without good cause; and
(c) Include the cabinet’s procedure and any other information that provides the household with an understanding of the proceedings and that contributes to the effective presentation of the household’s case.

Section 13. Hearing Official. (1) The cabinet shall designate a hearing official who:
(a) Does not have any personal stake or involvement in the case;
(b) Was not directly involved in the initial determination of the action which is being contested;
(c) Was not the immediate supervisor of the case worker who took the action; and
(d) Is an employee of the cabinet and
(e) Who is not otherwise disqualified pursuant to KRS 138.040.
(2) The hearing official conducting the hearing shall have the authority set forth in KRS 138.050 and shall:
(a) Order, where relevant and useful, an independent medical assessment or professional evaluation from a course mutually satisfactory to the household and the cabinet;
(b) Maintain a hearing record complying with KRS 138.130, and provide a recommendation for final decision by the hearing authority containing findings of fact, conclusions of law and a recommended disposition.
(c) The hearing official shall render a hearing decision in the name of the cabinet in accordance with Section 16 of this administrative regulation.

Section 14. Rights During Hearing. (1) During the hearing process, the household or its representative shall be given adequate opportunity to:
(a) Examine all documents and records to be used at the hearing at any time during working hours before the date of the hearing as well as during the hearing;
(b) Examine the contents of the case file including the application form and documents of verification used by the cabinet to establish the household’s ineligibility or eligibility and allotment;
(c) Present the case or have it presented by a legal counselor or other person;
(d) Bring witnesses, friends or relatives;
(e) Advance arguments without undue interference;
(f) Question or refute any testimony or evidence, including an opportunity to confront and cross-examine adverse witnesses; and
(g) Submit evidence to establish all pertinent facts and circumstances in the case.
(2) Confidential information, such as the names of individuals who have disclosed information about the household without its knowledge or the nature or status of pending criminal proceedings, shall be protected from release.
(3) If requested by the household or its representative, the cabinet shall provide a free copy of the portions of the case file that are relevant to the hearing.
(4) Confidential information that is protected from release and other documents or records, not relevant to the hearing, which the household or its representative have an opportunity to contest or challenge shall not be introduced at the hearing or affect the hearing official’s decision.

Section 15. Hearing Decision. (1) Decisions of the hearing officer shall comply with federal law and regulation and shall be based on the hearing record.
(2) The contents of the official record for a final decision by the hearing authority shall comply with KRS 138.090(5) and 138.130.
(3) This record shall be retained in accordance with KAR 3.050, Section 6.
(4) This record shall be available to the household or its representative during working hours for copying and inspection.
(5) A decision by the hearing authority shall:
(a) Be binding on the cabinet;
(b) Summarize the facts of the case;
(c) Specify the reasons for the decision; and
(d) Identify:
(1) The supporting evidence;
(2) The pertinent state administrative regulation; and
(3) Corresponding federal regulation.
(6) The decision shall become a part of the record.
(7) The household and the local office shall each be notified in writing of:
(a) The decision;
(b) The reasons for the decision;
(c) The available appeal rights;
(d) The issuance or termination of the household’s benefits as decided by the hearing authority and
(e) The fact that an appeal may result in a reversal of the decision.
(8) The household shall be notified of the right to appeal its case to the appeal board in accordance with Section 17 of this administrative regulation.

Section 16. Implementation of Hearing Decisions. (1) The cabinet shall ensure that all final hearing decisions are reflected in the household’s case file and are within the time limits specified in Section 3 of this administrative regulation.
(2) If the hearing authority determines that a household has been improperly denied program benefits, or has been issued a lesser allotment than was due, lost benefits shall be provided to the household.
(3) The cabinet shall restore benefits to a household that leaves the county before the departure decision.
(4) If benefits are not restored prior to the household’s departure, the county office shall forward an authorization for benefits to the household or to the new county office if known.
(5) The county office shall accept an authorization and issue the appropriate benefits whether the authorization is:
(a) Presented by the household;
(b) Received directly from another county office;
(6) When the hearing authority upholds the cabinet’s action, a claim against the household for any overissuance shall be prepared.

Section 17. Appeal Board. (1) A household dissatisfied with the hearing officer’s decision may appeal to the appeal board within twenty (20) days from the date of the hearing decision.
(2) Within forty-five (45) days of receipt of the request for an appeal of a fair hearing decision, the cabinet shall ensure that:
(a) The review is conducted;
(b) A decision is reached;
(c) The decision shall be reflected in the cabinet’s decision.
(4) After notification of a hearing decision which upholds the cabinet’s action, the household shall be notified of the right to pursue judicial review of the decision pursuant to KRS 138.040.

Section 18. Judicial Review. A household aggrieved by the appeal board’s decision shall have the right to appeal the decision to the circuit court of appropriate jurisdiction pursuant to KRS 138.040.

Section 19. Material Incorporated by Reference. (1) Form PAFS, Revised 3/85, is required for a fair hearing.
(2) This form may be inspected and copied at the Department for Community-Based Services, 275 East Main Street, Frankfort, Kentucky 40621 and at each of the department’s local offices. Office hours are 8 a.m. to 4:30 p.m.

TOM EMBERTON, Jr., Commissioner
MIKE BURNSIDE, Deputy Secretary
MARK R. BIRDWHISTELL, Secretary
APPROVED BY AGENCY: June 13, 2006
FILED WITH LRC: June 13, 2006 at 4 p.m.
CONTACT PERSON: Jill Brown, Office of Legal Services, 275 East Main Street 5W-B, Frankfort, Kentucky 40621, phone (502) 564-7905, fax (502) 564-7573.
REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: David Gayle

(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation establishes the fair hearing procedures used by the cabinet in the administration of the Food Stamp Program.
(b) The necessity of this administrative regulation: This administrative regulation is needed to establish uniform standards for conducting fair hearings related to the Food Stamp Program.
(c) How this administrative regulation conforms to the content of the authorizing statutes: The cabinet has responsibility under 7 C.F.R. 273.15 and KRS Chapter 13B to provide a fair hearing process for a Food Stamp Program applicant or recipient who is dissatisfied with a cabinet action or decision affecting food stamp benefits.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes the hearing process used by the cabinet in the administration of the Food Stamp Program.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this administrative regulation: This amendment will remove the requirement for a party in involved in a hearing to submit material or documents prior to the date of hearing in order to have the material admitted as evidence at the hearing. The amendment will also define the hearing process in terms of a recommended order, written exceptions, and final order, in accordance with KRS Chapter 13B.
(b) The necessity of the amendment to this administrative regulation: This amendment is necessary in order for the regulation to match the recent changes in hearing process for Food Stamp and public assistance program hearings. The changes were implemented to comply with KRS Chapter 13B.
(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms with 7 C.F.R. 273.15 and KRS Chapter 13B by establishing the hearing system used by cabinet in the administration of the Food Stamp Program.
(d) How the amendment will assist in the effective administration of the statutes: This amendment revises the requirements to be followed in conducting a fair hearing related to the Food Stamp Program.
(3) List the type and number of individuals, business, organizations, or state and local governments affected by this administrative regulation: All Food Stamp Program applicants and recipients in the Commonwealth will be affected by this administrative regulation. Currently, there are approximately 587,000 Individuals, or 265,000 households, participating in the Food Stamp Program in Kentucky, and each month approximately 90 food stamp fair hearings are conducted.
(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 provide food stamp participants and workers the opportunity to file exceptions or rebuttal to a hearing recommendation before the final order is entered. This is a recourse that was not available under the previous hearing process for the Food Stamp Program.
(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: No additional cost to the cabinet.
(b) On a continuing basis: No additional cost to the cabinet.
(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funding will be State General Funds and Food Stamp Federal Funds. The funding has been appropriated in the enacted budget.
(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change, if it is an amendment: There are no fees and no increase in funding for this administrative regulation.
(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: There are no fees in this administrative regulation.
(9) TIERING: Is tiering applied? No, tiering was not applied, as the administrative regulation will be applied in a like manner on a statewide basis.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate: 7 C.F.R. 273.15.
2. State compliance standards. KRS Chapter 13B, 194A.010, and 194A.050.
3. Minimum or uniform standards contained in the federal mandate: 7 C.F.R. 273.15.
4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No
5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. None

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Community Based Services
Division of Policy Development
(1)(Amended After Comments)


RELATES TO: KRS [Chapter 46-A] 61.670-61.884, 194A.060
[404B.060], 199,011(7), [499.482—199.471], 202A.011(12),
311.720(9), 314.011(5), (9), (609.006), 605.090-605.140, 605.100
[606.120-606.120-605.160], 620.030, 620.050, Chapter 625, 16
C.F.R. 1000 - 1750, 45 C.F.R. Parts 160, 164, 45 C.F.R. 1353.34,
416 S. Ct. 2176 (1999)].

STATUTORY AUTHORITY: KRS 194A.050(1), 199,472,
605.100(1), 605.150

NECESSITY, FUNCTION, AND CONFORMITY: KRS
194A.050(1) authorizes the Secretary for the Cabinet for Health
and Family Services to promulgate administrative regulations nec-
essary to operate programs and fulfill the responsibilities vested in
the cabinet. [EO-2004-70] reorganizes the executive branch of
government and establishes the Cabinet for Health and Family
Services; KRS 605.100(1) authorizes the cabinet to arrange pro-
grams designed to provide for classification, segregation, and spe-
cialized treatment of children according to their respective
problems, needs, and characteristics. KRS 199.472 and 605.150
authorize the cabinet to promulgate administrative regulations to
establish the process of determining an applicant's capacity for
food assistance. [In addition, Olmstead v. L.C. and E.W., 416 S. Ct.
2176 (1999), held that unnecessary institutionalization of a
person with a disability may be a violation of the Americans with
Disabilities Act and that, given certain exceptions, services
should be delivered in the most integrated setting appropriate to
the treatment needs of a person with a disability.] This administra-
tive regulation establishes criteria for resource homes and re-
cipe care providers caring for foster or adoptive children.

Section 1. Definitions. (1) " Applicant" means an individual or
family, subject to approval by the cabinet as a resource home.
(2) "Commissioner" means commissioner of the Department
for Community Based Services.
(3) "Department" means Department for Community Based
Services.
(4) "Health professional" means a person actively licensed in
Kentucky as a:
(a) Physician;
(b) Physican's assistant;
(c) Advanced registered nurse practitioner;
(d) Registered nurse as defined in KRS 314.011(5) [Nurse
employed under the supervision of a physician].
(5) "Independent living services" means services provided to
youth to assist them in the transition from the dependency of
childhood to living independently.
(6) "Medically-fragile child" means a child who has a medical
condition as defined in Section 6(1)(8) of this administrative regu-
lation.
(7) "Professional experience" means paid employment or volunteer work or volunteer employment in a setting where there is supervision and periodic evaluation.

(8) "Resource home" means a home in which a parent is approved by the cabinet to provide services as specified in Section 3(12) of this administrative regulation.

(9) "Respite care" means temporary care provided by a provider as specified in Section 21 of this administrative regulation.

(a) Provide relief to the resource foster home parents; or

(b) Allow for an adjustment period for the child in out-of-home care.

(10) "Specialized medically-fragile child" means a child determined by the cabinet to have a medical condition, documented by a physician, that is severe enough to require placement with a resource home parent who is a:

(a) Health professional;

(b) Registered nurse as defined in KRS 314.011(5); or

(c) Licensed practical nurse as defined in KRS 314.011(9).

Section 2. Out-of-home Placement in a Resource Home Providing Only Foster Care Services. (1) No more than five (5) children, including children under the custodial control of the cabinet and the resource home parent's own children living at home, shall reside in a resource home that provides only foster care services.

(2)(e)(ii) To request an exception to subsection (1) of this section, the following forms shall be submitted to designated regional cabinet staff within ten (10) working days of placement:

(a) [ ] DFP-112-A, Placement Exception Request; and

(b) [ ] DFP-112-B, Resource Foster Exception Plan, documenting the:

1. [ ] Reason the placement is in the best interest of the child; and

2. [ ] Specific support services to be provided.

(6) A resource home that provides only foster care services with the current number of children before the effective date of the administrative regulation shall not be required to comply with paragraph (a) and (2) of this subsection until December 31, 2004.

(3) No more than two (2) children under age two (2), including children placed in out-of-home care by the cabinet and the resource home parent's own children, may reside at the same time in a resource home that provides only foster care services, unless an exception is approved pursuant to subsection (2) of this section.

(4) Cabinet staff shall inform the resource home parent in accordance with:

(a) KRS 605.090(1)(b); and

(b) KRS 605.090(6).

Section 3. General Requirements for a Resource Home Parent. (1) Unless approved by designated regional cabinet staff, a resource home provider shall:

(a) Be at least twenty-one (21) years of age; and

(b) Show proof of the applicant's United States citizenship or legal immigrant status, as described in 8 U.S.C. Sec. 1151.

(2) A resource home applicant between eighteen (18) to twenty-one (21) years of age may be approved as a resource home parent if:

(a) The resource home applicant is related to a child under the custodial control of the cabinet;

(b) The resource home applicant can meet the needs of the child; and

(c) Cabinet staff determines the placement is in the best interest of the child.

(3) A department employee who provides protection and permanency services may apply to adopt a child in the care and custody of the cabinet if the:

(a) Department employee:

1. Had no relationship with the child or a parent of the child prior to the termination of parental rights in accordance with KRS Chapter 625; or

2. Has adopted a sibling of the child available for adoption; and

(b) Commissioner approves the employee to adopt.

(4) A department employee who provides protection and permanency services shall be prohibited from becoming a respite care provider or resource home parent who provides foster care services or respite care for a child in the care and custody of the cabinet, regardless of the child's residence, unless the:

(a) Department employee was a resource home parent or a respite care provider for the child when employment with the department began; and

(b) Commissioner approves the employee to be a respite care provider or resource home parent who provides foster care services or respite care for the child.

(5) A married couple may apply to become resource home parents.

(6) A single unmarried person may apply to become a resource home parent.

(7) The decision to foster or adopt a child shall be agreed to by each adult member of the applicant's household.

(8)(a) Each adult member of the applicant's family shall submit a DPP-107, Health Information Required for Resource Home Applicant or Adult Household Members, completed.

1. By a health professional, stating that the individual is free of:

a. [ ] Communicable or infectious disease; or

b. Condition that presents a health or safety risk to a child placed in the applicant's home; and

2. As a part of:

a. The Initial Application; or

b. A resource home review pursuant to Section 17 of this administrative regulation [2. A condition that presents a health or safety risk to a child placed in the applicant's home].

(b) Each resource home parent applicant shall submit a DPP-107, Health Information Required for Resource Home Applicants or Adult Household Members, current within one (1) year, completed by a health professional, attesting to the parent applicant's:

1. General health, including that the applicant is free of tuberculosis; and

2. Medical ability to care for a child placed in the applicant's home.

(9) Each resource home parent applicant shall submit a DPP-108, Health Information Required for Resource Home Applicants Regarding Dependent Children—current within one (1) year, for each child member of the applicant family.

(10) A resource home applicant shall have a source of income:

(a) Sufficient to meet the applicant's household expenses; and

(b) Separate from:

1. [ ] Fostor or resource home care reimbursement; or

2. [ ] Adoption assistance.

(11) Unless specified in a contract between the cabinet and a child welfare agency that provides foster care services, a resource home parent shall accept a child for foster care only from the cabinet.

(12) An approved resource home parent shall be willing to:

(a) Provide foster care services for a child placed in out-of-home care by the cabinet;

(b) Adopt a child:

1. Whose parent's parental rights have been terminated; and

2. Who is under the custodial control of the cabinet;

(c) Provide respite care [services by caring] for a child under the custodial control of the cabinet; or

(d) Provide any combination of the services described in paragraphs (a) through (c) of this subsection.

(13) A resource home applicant shall provide to the cabinet:

(a) The names of three (3) personal references who:

1. Are not related to the applicant; and

2. Shall be interviewed by cabinet staff in person or by telephone; or

b. Shall provide letters of reference for the applicant; and

(b) Two (2) credit references.

(14) Adult children of the resource home applicant who do not live in the home shall be contacted by cabinet staff regarding applicant's parenting history.

(15) If applicable, verification shall be obtained from the resource home applicant regarding:

(a) Previous divorce;

(b) Death of a spouse; and

(c) Present marriage.
A resource home applicant who does not have custody of his own biological child shall provide:
(a) A copy of the visitation order, if applicable;
(b) A copy of the child support order; and
(c) Proof of current payment of child support.

17. A resource home applicant and any member of the applicant's household [or full-household member] shall submit to the background checks in accordance with 922 KAR 1:490.

18. The cabinet shall perform background checks in accordance with criteria established in 922 KAR 1:490.

Section 4. Home Environment. (1)(a) Following approval as a resource home, the resource home may request written approval from designated regional cabinet staff to provide services as a certified:
1. Provider of supports for community living in accordance with 907 KAR 1:145; or
2. Family child care home in accordance with 922 KAR 2:100.
(b) Except as provided in paragraph (a) of this subsection, an approved resource home shall not simultaneously:
1. Provide day care center services in accordance with 922 KAR 1:090; and
2. Be used as a licensed or certified health care or social service provider.
(2) If the resource home adjoins a place of business open to the public, potential negative impact on the family and the child shall be examined including the:
(a) Hours of operation;
(b) Type of business; and
(c) Clientele.
(3) The resource home parent shall have access to:
(a) Reliable transportation;
(b) School;
(c) Recreation;
(d) Medical care; and
(e) Community facilities.
(4) A resource home parent who drives shall:
(a) Possess a valid driver's license;
(b) Possess proof of liability insurance; and
(c) Abide by passenger restraint laws.
(5) Up to four (4) children, including the resource home parent's own children, may share a bedroom.
(6)(a) Each child shall have his own separate bed age and size appropriate for the child; or
(b) If the child is under age one (1), a crib that meets Consumer Products Safety Commission standards, 16 C.F.R. 1210 to 1752; or if the child is under age one (1), a crib that:
(1) Meets Consumer Products Safety Commission standards, 16 C.F.R. 1210 to 1752; and
(2) Is age and size appropriate for the child.
(7) Except as approved by designated regional cabinet staff, a resource home parent shall not share a bedroom with a child under the custodial control of the cabinet.
(8) A bedroom used by a child under the custodial control of the cabinet shall be comparable to each bedroom in the house.
(9) The physical condition of the resource home shall:
(a) Not present a hazard to the safety and health of a child;
(b) Be well heated and ventilated;
(c) Comply with state and local health requirements regarding water and sanitation; and
(d) Provide indoor and out-of-doors recreation space appropriate to the developmental needs of a child placed in the resource home.
(10) The following shall be inaccessible to a child:
(a) Medication;
(b) Alcoholic beverage;
(c) Poisonous or cleaning material;
(d) Ammunition; and
(e) Firearms.
(11) Ammunition and firearms shall not be stored together and each shall be locked away.
(12) A dangerous animal shall not be allowed near the child.
(13) Medication shall be locked.
(14) First aid supplies with unexpired dates shall be available and stored in a place easily accessible to an adult.
(15) A working telephone shall be available in the home.
(16) The home shall be equipped with a working smoke alarm within ten (10) feet of each bedroom.

Section 5. Emergency Shelter Resource Home. (1) An applicant may be approved as an emergency shelter resource home if the parent:
(a) Meets the requirements of Sections 3 and 4 of this administrative regulation;
(b) Ensures the care of a child age nine (9) or above who needs immediate, unplanned care for less than fourteen (14) days, unless designated regional cabinet staff approve:
1. An exception to the minimum age of twelve (12) for a child between age eight (8) and twelve (12); or
2. An extension to the fourteen (14) days of unplanned care, not to exceed a period of sixteen (16) days; and
(c) Completes ten (10) hours of cabinet-sponsored training or training approved in advance by the cabinet beyond the family preparation [required-prepare] as required by Section 9 of this administrative regulation; and
(d) Has a working telephone in the home.
(2) An approved emergency shelter resource home parent shall receive approval as an emergency shelter resource home if the parent completes ten (10) hours of ongoing cabinet-sponsored training or training approved in advance by the cabinet:
(a) Beyond the annual requirement; and
(b) Before the anniversary date of approval as an emergency shelter home.

Section 6. Medically-fragile Resource Home. (1) An applicant may be approved as a medically-fragile resource home if the resource home parent:
(a) Meets the requirements in Sections 3 and 4 of this administrative regulation;
(b) Ensures the care of a child approved by cabinet staff as medically-fragile because of:
1. Medical condition documented by a physician that may become unstable and change abruptly resulting in a life-threatening situation;
2. Chronic and progressive illness or medical condition;
3. Need for a special service or ongoing medical support; or
4. Health condition stable enough to be in a home setting only with monitoring by an attending:
   a. Health professional
   b. Licensed nurse as defined in KRS 314.011(5); or
   c. Licensed practical nurse as defined in KRS 314.011(9);
(c) Is a primary caretaker who is not employed outside the home, except as approved by designated regional cabinet staff;
(d) Completes:
1. A medically-fragile curriculum approved by the cabinet; or
2. An additional twenty-four (24) hours of cabinet-sponsored training or training approved in advance by the cabinet, beyond the family preparation as required by Section 9 of this administrative regulation [required-prepare] in the areas of:
   a. Growth and development;
   b. Nutrition; and
   c. Medical disabilities;
   d. Receives training from a health professional in how to care for the specific medically-fragile child who shall be placed;
   e. Maintains current certification in:
      1. Cardiopulmonary resuscitation or "CPR"; and
      2. First aid; and
   f. Has a home within:
      1. One (1) hour of a medical hospital with an emergency room; and
   g. Twenty (30) minutes of a local medical facility;
2. [Health-care] Professional experience related to the care of a medically-fragile child may substitute for the training requirement specified in subsection (1)(d) of this section:
(a) Upon the approval of designated regional cabinet staff; and
(b) If the resource home parent is:
   1. Health professional;
   2. Registered nurse as defined in KRS 314.011(5); or
3. Licensed practical nurse as defined in KRS 314.011(9).

(3) Except for a sibling group or unless approved by designated regional cabinet staff, no more than four (4) children, including the resource home parent's own children, shall reside in a medically-fragile resource home.

(4) Unless an exception is approved pursuant to Section 2(2) of this administrative regulation and if a medically-fragile resource home has daily support staff to meet the needs of a medically-fragile child:
   (a) A one (1) parent medically-fragile resource home shall:
      1. Not care for more than one (1) medically-fragile child, and
      2. Demonstrate access to available support services; and
   (b) A two (2) parent medically-fragile resource home shall:
      1. Not care for more than two (2) medically-fragile children; and
      2. Demonstrate access to available support services.

(5) Unless the resource home is closed, pursuant to Section 18 of this administrative regulation, an approved medically-fragile resource home parent shall receive annual reappraisal by the cabinet as a medically-fragile resource home if the parent:
   (a) Annually completes twenty-four (24) hours of ongoing cabinet-sponsored training or training approved in advance by the cabinet before the anniversary date of approval as a medically-fragile home; and
   (b) Continues to meet the requirements of this section.

(6) An approved medically-fragile resource home parent shall cooperate in carrying out the child's health plan.

Section 7. Care Plus Resource Home. (1) An applicant may be approved as a care plus resource home parent if the resource home parent:
   (a) Meets the requirements of Sections 3 and 4 of this administrative regulation;
   (b) Cares for a child who:
      1. Has an emotional or behavioral problem; and
      2. Is due to be released from a treatment facility;
   (c) Is a primary caretaker who is not employed outside the home, except as approved by designated regional cabinet staff;
   (d) Is not employed outside the home, except as approved by designated regional cabinet staff; and
   (e) Maintains a daily record of the child's activities and behaviors; and
   (f) Attends all care planning conferences.

(2) (a) Upon the effective date of this administrative regulation, a family treatment home, in which a child described in subsection 1(b) of this section was placed by the cabinet within the twelve (12) months preceding the effective date of this administrative regulation, shall be classified as a care plus resource home.

(3) Unless an exception is approved pursuant to Section 2(2) of the administrative regulation and the care plus resource home has daily support staff to meet the needs of a child described in subsection 1(b) of this section:
   (a) No more than four (4) children, including the resource home parent's own children, shall reside in a care plus resource home.

Section 8. Specialized Medically-fragile Resource Home. (1) An applicant may be approved as a specialized medically-fragile resource home if the applicant:
   (a) Meets the requirements in Sections 3 and 4 of this administrative regulation;
   (b) Has experienced numerous placement failures; and
   (c) Is a primary caretaker who is not employed outside the home, except as approved by designated regional cabinet staff;
   (d) Completes:
      1. A medically-fragile curriculum approved by the cabinet; or
      2. An additional twenty-four (24) hours of cabinet-sponsored training or training approved in advance by the cabinet before the family preparation required in Section 9 of this administrative regulation as required in Section 9 of this administrative regulation;
   (e) Maintains current certification in:
      1. CPR; and
      2. First aid; and
   (f) Has a home within:
      1. One (1) hour of a medical hospital with an emergency room; and
      2. Thirty (30) minutes of a local medical facility.

(2) Unless an exception is approved pursuant to Section 2(2) of this administrative regulation, no more than four (4) children, including the resource home parent's own children, shall reside in a specialized medically-fragile resource home.

(3) Unless an exception is approved pursuant to Section 2(2) of this administrative regulation and a specialized medically-fragile resource home has daily support staff to meet the needs of a child described in subsection 1(b) of this section:
   (a) A one (1) parent specialized medically-fragile resource home shall:
      1. Not care for more than one (1) specialized medically-fragile child; and
      2. Demonstrate access to available support services; and
   (b) A two (2) parent specialized medically-fragile resource home shall:
      1. Not care for more than two (2) specialized medically-fragile children; and
      2. Demonstrate access to available support services.

(4) A care plus resource home shall have access to respite care provided by an individual who meets criteria established in Section 13(5) of this administrative regulation.
medically-fragile home; and
(b) Continues to meet the requirements of this section.
(5) [Health-care] Professional experience related to the care of a 
specialized medically-fragile child may substitute for the training 
requirement specified in subsection (1)(d) of this section, upon the 
approval of designated regional cabinet staff if the resource home 
parent is a:
(a) Health professional;
(b) Registered nurse as defined in KRS 314.011(5); or
(c) Licensed practical nurse as defined in KRS 314.011(9).
(6) An approved specialized medically-fragile resource home 
parent shall cooperate with the cabinet in carrying out the child's 
health plan.

Section 9. Preparation and Selection of a Resource Home 
Parent. (1) The cabinet shall recruit a resource home and approve 
the resource home prior to the placement of a child.
(2) A resource home applicant shall complete a:
(a) Minimum of thirty (30) hours of initial family preparation;
and
(b) Curriculum approved by designated cabinet staff, including 
the following topics:
1. Orientation to the cabinet's resource home program;
2. An example of an actual experience from a resource home 
parent that has fostered a child; and
3. Information regarding:
   a. The stages of grief;
   b. Identification of the behavior linked to each stage;
   c. The long-term effect of separation and loss on a child;
   d. Permanency planning for a child, including independent 
living services;
   e. The importance of attachment on the growth and develop-
ment and how a child may maintain or develop a healthy attach-
ment.
   f. Family functioning, values, and expectations of a foster 
   home;
   g. Cultural competency;
   h. How a child comes into the care and custody of the cabinet, 
and the importance of achieving permanency,
   i. Types of maltreatment and experiences in foster care and 
adoption;
   j. The importance of birth family and culture and helping chil-
   dren leave foster care; and
   k. Identification of changes that may occur in the home if a 
   placement occurs, to include:
      (i) Family adjustment and disruption;
      (ii) Identity issues; and
      (iii) Discipline issues and child behavior management; and
   (iv) Specific requirements and responsibilities of a resource 
   home parent.
(3) Except for a cabinet-approved individualized preparation 
program, family preparation for placement of a child under the 
custodial control of the cabinet shall be completed in a group set-
ning by each adult who resides in the household and provides care.
(4) If a new adult moves into an approved resource home 
where a child is already placed by the cabinet, the child may re-
main and additional children may be placed, if the new adult:
(a) Completes training in accordance with subsection (2) of this 
section within six (6) months of entering the home; and
(b) Meets the requirements specified in Sections 3 and 4 of this 
administrative regulation.
(5) An adult child, or elderly person who resides in the resource 
home shall not be required to complete family preparation if that 
individual shall not be responsible for routine daily care of a child 
placed in the home by the cabinet.
(6) The cabinet shall not be obligated to grant resource home 
approval or placement of a specific child to an individual or family 
that completes family preparation.
(7) The purpose of family preparation shall be to:
(a) Orient the applicant to the philosophy and process of the 
cabinet's family foster care or adoption programs;
(b) Develop greater self-awareness on the part of the applicant 
to determine strengths and needs;
(c) Sensitize the applicant to the kinds of situations, feelings, 
and reactions that are apt to occur with a child in the custody of the 
cabinet; and
(d) Effect behavior so that an applicant may better fulfill the role 
as a resource home parent of a child.
(8) The family preparation process shall emphasize:
(a) Self-evaluation;
(b) Participation in small group exercises; and
(c) Discussion with experienced resource home parents.
(9) In addition to completion of the family preparation curricu-
ulum, at least two (2) family consultations shall be conducted by 
cabinet staff in the home of an applicant, to include:
(a) Documentation that the requirements in Sections 3 and 4 of 
this administrative regulation have been met;
(b) Documentation that a personal interview with each member 
of the applicant's household has been completed;
(c) Discussion of the attitude of each member of the applicant's 
household toward placement of a child,
(d) Observation of the functioning of the applicant's household, 
including interpersonal relationships and patterns of interaction;
and
(e) Assurance that the applicant is willing to accept a child's 
relationship with the child's family of origin.
(10) An applicant approved as a foster or adoptive parent or 
respite care provider by another state, or by a child-placing agency 
as described in KRS 199.011(7) shall:
(a) Be assessed by cabinet staff to ascertain the applicant's 
level of skill as a potential Kentucky resource home parent;
(b) Not be required to complete the family preparation process 
for approval as a Kentucky resource home parent if cabinet staff:
   1. Determine that the applicant possesses the necessary skills 
   for fostering; and
   2. Obtain records and recommendation from the other state or 
   child-placing agency.
(11) If cabinet staff determines [determine] that an applicant 
described in subsection (4) or (10)[(6)] of this section lacks nec-
ecessary foster parent skills, an individualized preparation curriculum 
shall be developed to fulfill unmet training needs.
(12)(a) A resource home parent shall request the recommenda-
tion of cabinet staff prior to enrolling in training specified in Section 
5(1)(c), 6(1)(d), 7(1)(a)[(6)], or 8(1)(d) of this administrative 
regulation and:
(b) Cabinet staff may recommend the resource home parent to 
receive training specified in Section 5(1)(c), 6(1)(d), 7(1)(a)[(6)], or 
8(1)(d) of this administrative regulation if the resource home parent 
possesses the aptitude to care for a
   1. Child described in Section 5(1)(b) of this administrative 
   regulation;
   2. Medically-fragile child;
   3. Child described in Section 7(1)(b) of this administrative 
   regulation; or
   4. Specialized medically-fragile child.

Section 10. Completion of the Resource Home Approval Pro-
cess. (1) Designated regional cabinet staff in a supervisory role may 
approve a resource home applicant if:
(a) The applicant provides written and signed information per-
taining to family history and background;
(b) The applicant completes family preparation as required by 
[specified in] Section 9(2) of this administrative regulation;
(c) The information required in Section 9(6) through (10) and 
(13) through (17) [469] of this administrative regulation has been 
obtained;
(d) Designated regional cabinet staff recommends approval; and
(e) The applicant's ability to provide a foster, adoptive, or res-
pite care service is consistent with the:
   1. Cabinet's minimum resource home requirements; and
   2. Needs of the families and children served by the cabinet.
(2) If the designated regional cabinet staff determines that an 
applicant does not meet the minimum requirements for approval as a 
resource home parent, the cabinet shall recommend that the 
applicant withdraw the request.

Section 11. Denial of a Resource Home Request. (1) Desig-
nated regional cabinet staff shall notify an applicant, in writing, if the request to become a resource home parent is not recommended for one (1) of the following reasons:

(a) The applicant is unwilling to withdraw the request to become a resource home parent after receiving a recommendation to withdraw; or

(b) The applicant desires to adopt, but is unwilling to adopt a child under the custodial control of the cabinet.

(2) If the resource home applicant disagrees with the cabinet's recommendation to not accept the applicant as a resource home, designated regional cabinet staff shall review the request to become a resource home parent and issue a final written determination regarding the cabinet's recommendation.

Section 12. Expectations of Resource Homes Providing Foster Care Services. A resource home parent providing foster care services shall:

(1) Provide a child placed by the cabinet with a family life, including:

(a) Nutritious food;

(b) Clothing comparable in quality and variety to that worn by other children with whom the child may associate;

(c) Affection;

(d) Training;

(e) Recreational opportunities;

(f) Educational opportunities;

(g) Nonmedical transportation;

(h) Independent living services, for a child age twelve (12) and older;

(i) Opportunities for development consistent with their religious, ethnic and cultural heritage;

(2) Permit cabinet staff to visit;

(3) Share with cabinet staff [the worker] pertinent information about a child placed by the cabinet;

(4) Comply with the general supervision and direction of the cabinet concerning the care of a child placed by the cabinet;

(5) Report immediately to the cabinet if there is a:

(a) Change of address;

(b) Medical condition, accident or death of a child placed by the cabinet;

(c) Change in the number of people living in the home;

(d) Significant change in circumstances in the resource foster home;

(e) An absence without official leave;

(f) A suicide attempt; or

(g) Criminal activity by the child requiring notification of law enforcement.

(6) Notify the cabinet if:

(a) Leaving the state with a child placed by the cabinet for more than two (2) nights; or

(b) A child placed by the cabinet is to be absent from the resource foster home for more than three (3) days;

(7) Cooperate with the cabinet when a contact is arranged by cabinet staff between a child placed by the cabinet and the child's birth family including:

(a) Visits;

(b) Telephone calls; or

(c) Mail;

(8) Surrender a child or children to the authorized representative of the cabinet upon request;

(9) Keep confidential all personal or protected health information as shared by the cabinet, in accordance with KRS 194A.050 [194A.060], 620.050 and 45 C.F.R. Parts 160 and 164, concerning a child placed by the cabinet or the child's birth family;

(10) Support an assessment of the service needs of a child placed by the cabinet;

(11) Participate in case-planning conferences concerning a child placed by the cabinet;

(12) Cooperate with the implementation of the permanency goal established for a child placed by the cabinet;

(13) Notify the cabinet at least ten (10) calendar days in advance of the home becoming certified to provide foster care or adoption services through a private child-placing agency in accordance with 922 KAR 1:310;

(14) Treat a child placed by the cabinet with dignity;

(15) Arrange for respite care services in accordance with Section 13(5) of this administrative regulation;

(16) Ensure that a child in the custody of the cabinet receives the child's designated per diem allowance;

(17) Facilitate the delivery of medical care to a child placed by the cabinet as needed, including:

(a) Administration of medication to the child and daily documentation of the medication's administration; and

(b) Annual physicals and examinations for the child; and

(18) Report suspected incidents of child abuse, neglect, and exploitation in accordance with KRS 620.030.

Section 13. Reimbursements for Resource Homes Providing Foster Care Services. (1) Types of per diem reimbursement. The cabinet shall approve a resource home as specified in Sections 3 and 4 of this administrative regulation and authorize a per diem reimbursement as follows:

(a) A basic per diem reimbursement shall be:

1. Based on the age of a child placed by the cabinet in the resource home; and

2. Made to the resource home parent that:

a. Does not meet criteria specified in paragraphs (b) through (i) of this subsection; and

b. Meets annual training required in Section 15(1)(a) of this administrative regulation.

(b) An advanced per diem reimbursement shall be:

1. Made to a resource home who:

a. Has completed twenty-four (24) hours of advanced training, including training on child sexual abuse, beyond the family preparation [preservice training], specified in Section 9(2) [4] of this administrative regulation; and

b. Completes twelve (12) hours of ongoing cabinet-sponsored training or cabinet-approved training each year; and

2. Based on the age of the child placed by the cabinet in the resource home.

(c) An emergency shelter per diem reimbursement shall:

1. Be made to a resource home parent who:

a. Meets criteria specified in Section 5 of this administrative regulation; and

b. Cares for a child, described in Section 5(1)(b) of this administrative regulation, who is placed by the cabinet; and

2. a Be reimbursed for no more than fourteen (14) days, unless an extension is granted in accordance with Section 5(1)(b)2 of this administrative regulation; or

b. After fourteen (14) days revert to:

(i) A basic per diem reimbursement, described in paragraph (a) of this subsection; or

(ii) An advanced per diem reimbursement, if the resource home foster parent meets training requirements specified in paragraph (b)1a and b of this subsection.

(d) A basic medically-fragile per diem reimbursement shall be made to a resource home parent who:

1. Meets criteria specified in Section 6 of this administrative regulation; and

2. Provides for the care of a medically-fragile child.

(e) An advanced medically-fragile per diem reimbursement shall be made to a resource home parent who:

1. Meets criteria specified in Section 6 of this administrative regulation; and

2. Maintains a current license as a licensed practical nurse in accordance with KRS 314.011(9); and

3. Provides for the care of a medically-fragile child.

(f) A degree medically-fragile per diem reimbursement shall be made to a resource home parent who:

1. Meets criteria specified in Section 6 of this administrative regulation; and

2. Maintains a current license as a:

a. Registered nurse in accordance with KRS 314 011(5); or

b. Health professional; and

3. Provides for the care of a medically-fragile child.

(g) A basic care plus resource home per diem reimbursement shall be made to a resource home parent who:

1. Meets criteria specified in Section 7 of this administrative regulation; and

2. Maintains a current license as a:

a. Registered nurse in accordance with KRS 314 011(5); or

b. Health professional; and

3. Provides for the care of a medically-fragile child.
regulation; and
2. Provides for the care of a child described in Section 7(1)(b)
of this administrative regulation.

(b) An advanced care plus resource home per diem reimbursement shall be made to a resource foster home parent who:
1. Meets criteria specified in Section 7 of this administrative regulation;
2. Completes ongoing cabinet-sponsored or cabinet-approved training as specified in Section 9(2) of this administrative regulation;
3. Has one (1) year of experience as a care plus resource home; and
4. Provides for the care of a child described in Section 7(1)(b)
of this administrative regulation.
(i) An advanced specialized medically-fragile per diem reimbursement shall be made to a resource home parent who:
1. Meets criteria specified in Section 8 of this administrative regulation;
2. Maintains a current license as a licensed practical nurse in accordance with KRS 314.011(6); and
3. Provides for the care of a specialized medically-fragile child.
(j) A degreeed specialized medically-fragile per diem reimbursement shall be made to a resource home parent who:
1. Maintains a current license as a:
   a. Licensed registered nurse in accordance with KRS 314.011(5); or
   b. Physician in accordance with KRS 311.720(9); and
2. Meets criteria specified in Section 6 of this administrative regulation;
3. Provides for the care of a specialized medically-fragile child.
(k) Upon placement of a child by the cabinet, a per diem reimbursement shall:
1. Be specified in a contract between an approved resource foster home and the cabinet; and
2. Provide for the care of a child placed by the cabinet, to include:
   a. Housing expenses;
   b. Food-related expenses;
   c. Nonmedical transportation;
   d. Clothing;
   e. Allowance;
   f. Incidentsals;
   g. Babysitting, excluding childcare authorized in subsection (4)(b) of this section;
   h. Sports, recreation and school activities;
   i. One (1) day [twenty-four–(24)–hour period] of respite care per child per month; and
   j. School expenses.
(2) Medical coverage.
(a) Cabinet may authorize payment for medical expenses for a child in the custody of the cabinet after verification is provided that the child is not covered by health insurance, Medicaid or the Kentucky Children's Health Insurance Program ("K-CHIP").
(b) Designated regional cabinet staff shall approve authorization of payment for a medical treatment greater than $500.
(3) Child care services.
(a) The cabinet shall review requests for child care services every six (6) months for a working resource home parent who provides foster care services.
(b) Designated regional cabinet staff may approve requests for nonworking resource home parent who provides foster care services:
1. If a medical crisis affects the resource home parent; or
2. To allow for an adjustment period for the child.
(c) Designated regional cabinet staff shall review approved requests for child care services for a nonworking resource home parent every three (3) months.
(4) Training. To the extent funds are available and in accordance with Section 15(4) of this administrative regulation, the cabinet shall provide monies to the local social services agency to provide training to a resource home parent and their child. The training shall be designed to assist the resource home parent and their child in meeting the child's needs. The training may include:
(a) Mileage; and
(b) Babysitting; and
(c) Tuition or fees.
(5) Respite care.
(a) Except for a child in an emergency shelter resource home, respite care is available for a child placed by the cabinet in a resource home that provides foster care services.
(b) A resource home that provides foster care services shall be eligible for one (1) day [twenty-four–(24)–hour period] of respite care per month per child.
(c) A resource home that cares for a child in the custody of the cabinet and meets criteria established in Sections 6 through 8 of this administrative regulation shall be eligible for three (3) days of respite care per month per child.
(d) Designated regional cabinet staff may extend respite care up to fourteen (14) days, if designated regional cabinet staff document that the:
1. Resource home parent requires the additional respite care;
   a. To stabilize the child's placement in the resource home that provides foster care services; or
   b. Due to unforeseen circumstances that may occur, such as:
      (i) Death in the family;
      (ii) Illness; or
   (iii) Incidents;
2. Child placed in the resource home requires additional respite care to allow for a period of adjustment.
   (e) The cost of respite care shall not exceed the per diem for the child.
(f) A respite care provider shall be approved in accordance with Section 21 of this administrative regulation.
(g) Appeals. A resource home parent may appeal the timeliness of reimbursement in accordance with KAR 1:320.

Section 14. Home Study Requests. (1) Upon receipt of a request from another state's Interstate Compact on the Placement of Children Administrator in the interest of a child in the legal custody of that state's public agency, the cabinet shall complete a home study as specified in KAR 1:100, Section 6(6).
(2) The cabinet shall share a previously approved home study in accordance with the Kentucky Open Records Act, KRS 61.870-61.884 and 42 U.S.C. 671(a)(23).
(3) An individual may request an administrative hearing in accordance with KAR 1:320 for failure of the cabinet to act in accordance with subsections (1) and (2) of this section.

Section 15. Annual Resource Home Training Requirement. (1)(a) A resource home parent shall be required to complete, before the anniversary date of approval, at least six (6) hours of annual cabinet-sponsored training or training approved in advance by the cabinet.
(b) Training necessary to obtain certifications required by Sections 6(1)(f) and 8(1)(f) of this administrative regulation shall count towards the annual training requirement.
(2) An individualized curriculum may be developed for a resource home parent who is unable to participate in annual group training because of employment or other circumstances.
(3)(a) Except for a resource home parent with whom a child has developed a significant emotional attachment and is approved by designated regional cabinet staff, the resource home whose parent fails to meet the annual training requirement shall be closed.
(b) Additional children shall not be placed in the home until the training requirement has been satisfactorily met.
(4) Designated regional cabinet staff shall approve reimbursement, to the extent that funds are available, for the following expenses of a resource home parent who is participating in ongoing cabinet-sponsored or cabinet-approved training:
   (a) Mileage; and
   (b) Babysitting; and
   (c) Tuition or fees up to the amount of $100 per family per year or $200 per year for:
      1. Medically-fragile resource home;
      2. Specialized medically-fragile resource home; or
      3. Care plus resource home.
Section 16. Resource Home Annual Reevaluation. (1) A cabinet staff member shall conduct a personal, in-home interview with a resource home parent during the anniversary month of initial approval. The interviewer shall assess:
(a) Any change in the resource home;
(b) The ability of the resource home parent [individual family] to meet the needs of a child placed in the home; and
(c) Continuing compliance with the requirements of Sections 3 and 4 of this administrative regulation.
(2) The interviewer shall complete a DPP-1289, Annual Strengths/Needs Assessment for Resource Home Families during the interview.

Section 17. Resource Home Reviews. (1) Upon notification of a factor that may place unusual stress on the resource home or create a situation that may place a child at risk, cabinet staff shall:
(a) Immediately assess the health and safety risk of the child; and
(b) Complete a review of the resource home within thirty (30) days upon the finding of the risk [Cabinet staff shall complete a review within thirty (30) days of notification of a factor that may place a child at risk].
(2) Factors that shall result in a review of a resource home shall include:
(a) Death or disability of a family member;
(b) Sudden onset of a health condition that would impair a resource home parent's ability to care for a child placed in the home by the cabinet;
(c) Change in marital status;
(d) Sudden, substantial decrease in, or loss of, income;
(e) Childbirth;
(f) Use of a form of punishment that includes:
1. Cruel, severe, or humiliating actions;
2. Corporal punishment inflicted in any manner;
3. Denial of food, clothing, or shelter;
4. Withholding implementation of the child's treatment plan;
5. Denial of visits, telephone or mail contacts with family members, unless authorized by a court of competent jurisdiction; and
6. Assignment of extremely strenuous exercise or work;
(g) A report of abuse, neglect, or dependency that results in a finding that [if]
1. Is substantiated; or
2. Reveals concern relating to the health, safety, and well-being of the child [regarding the care of the child];
(h) If the resource home parent is cited with, charged with, or arrested due to a violation of law other than a minor traffic offense; or
(i) Other factor identified by cabinet staff that jeopardizes the physical, mental, or emotional well-being of the child.
(3) The narrative of the review shall contain:
(a) Identifying Information;
(b) Current composition of the household;
(c) Description of the situation that initiated the review;
(d) An evaluation of the resource home's family functioning to determine if the child's needs are met; and
(e) A plan for corrective action that may include a recommendation for closure of the resource home.

Section 18. Closure of an Approved Resource Home. (1) A resource home shall be closed if:
(a) Cabinet staff determines [determine] that the family does not meet the general requirements, as specified in Sections 3 and 4 of this administrative regulation, for a resource home;
(b) A situation exists that is not in the best interest of a child;
(c) Sexual abuse or exploitation by the resource home parent or by another resident of the resource home is substantiated;
(d) Substantiated child maltreatment of a child by a resident of the household occurs that is serious in nature or warrants removal of a child;
(e) A serious physical or mental illness develops that may impair or preclude adequate care of the child by the resource home parent; or
(f) The cabinet has not placed a child in the home within the preceding two (2) year period.
(2) A resource home may be closed according to the terms of the contract between the cabinet and the resource home.
(3) An approved adoptive home shall be closed pursuant to 922 KAR 1:100.
(4) If it is necessary to close an approved resource home, the reason shall be stated by cabinet staff in a personal interview with the family.
(5) The cabinet shall confirm, in a written notice to the resource home parent, the decision to close a home. The notice shall be delivered within thirty (30) days of the interview with the resource home parent.
(6) The written notice for closure of a resource home shall include:
(a) Notice that the cabinet shall not place a child in the home; and
(b) The reason why the resource home is being closed.

Section 19. Reapplication. (1) A former resource home parent whose home was closed pursuant to Section 18(1)(a) through (f) of this administrative regulation may be considered for reapproval if the cause of closure has been resolved.
(2) To reapply, a former resource home parent shall:
(a) Attend an informational meeting; and
(b) Submit the:
1. Names of references specified in Section 3(13) of this administrative regulation; and
2. Authorization for criminal records release specified in Section 3(17) of this administrative regulation.
(3) A reapplying former resource home parent shall reenroll and complete family preparation, as specified in Section 9 of this administrative regulation, unless the former resource home parent:
(a) Has previously completed family preparation, as specified in Section 9(2)(4)(4) of this administrative regulation; and
(b) Is considered a placement resource for children.
(4) An adoptive family may be reconsidered for adoptive placement pursuant to 922 KAR 1:100, Section 9.

Section 20. Resource Home Parent Adoption. (1) A resource home parent may adopt a child for whom parental rights have been terminated if:
(a) Resource home parent adoption is determined by cabinet staff to be in the best interest of the child;
(b) The child resides in the resource home; and
(c) Criteria in 922 KAR 1:100 are met.
(2) If a resource home parent expresses interest in adopting a foster child currently placed in the home and an alternative permanent placement is in the child's best interest, cabinet staff shall meet with the resource home parent prior to selection of an adoptive home to explain:
(a) Why an alternative permanent placement is in the child's best interest; and
(b) The resource home parent's right to submit a request to the cabinet to reconsider the recommendation.
(3) If a resource home parent is not approved for adoptive placement of a child currently placed in the home, cabinet staff shall meet with the resource home parent to explain the reason that the resource home parent adoption is not in the best interest of the foster child.

Section 21. Requirements for Respite Care Providers. (1) A respite care provider shall:
(a) Be:
1. An approved resource home; or
2. Approved in accordance with subsection (2) of this section; and
(b) Receive preparation for placement of a child, including information in accordance with:
1. KRS 605.090(1)(b); and
2. Section 6(1)(e) through (q) of this administrative regulation, if the child is a medically-fragile child; or
b. Section 8(1)(e) through (q) of this administrative regulation, if the child is a specialized medically-fragile child.
(2) If a resource home parent chooses a respite care provider...
who is not an approved resource home, the respite care provider shall:

(a) Meet criteria established in Sections 3(1), (2), (9)–(12), (17), (18) and 4 of this administrative regulation if respite care is provided outside the home of the resource home parent; or

(b) Meet criteria established in Section 2(1), (2), (17), and (18) of this administrative regulation if respite care is provided inside the home of the resource home parent and:

(i) If providing respite care for a child described in Section 7(1)(b) of this administrative regulation, have:

A. Professional experience or training in the mental health treatment of children or their families; or

B. A certificate of completion for twenty-four (24) hours of care plus training provided by the cabinet or approved in advance by the cabinet.

(ii) If providing respite care for a medically-fragile child:

a. Meet training requirements specified in Section 6 of this administrative regulation; or

b. Be a health professional; and

(c) Undergo health screenings as specified in Section 3(6) and

(d) Of this administrative regulation.

3. If providing respite care for a specialized medically-fragile child:

(a) Be a health professional; and

(b) Undergo health screenings as specified in Section 3(6) and

(c) Of this administrative regulation.

3. A respite care provider:

(a) May attend all family preparation as specified in Section 9 of this administrative regulation; and

(b) Shall comply with Section 2 of this administrative regulation, complete initial family preparation in accordance with Section 3 of this administrative regulation; or

(c) Have professional experience working directly with children, if providing respite care for a child in a basic or advanced resource home.

2. Have professional experience or training in the mental health treatment of children or their families, if providing respite care for a child in a basic or advanced resource home.

3. Be a health professional, if providing respite care for a child in a medically-fragile or specialized medically-fragile resource home.

A. A respite care provider shall not care for more children than is allowed by Section 2 of this administrative regulation.

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

(a) DPF-107, Health Information Required for Resource Home Applicants or Adult Household Members, edition 6/06 [6/04];

(b) DPF-108, Health Information Required for Resource Home Applicants Regarding Dependent Children, edition 6/06 [6/04];

(c) DPF-112A, Placement Exception Request, edition 6/06 [6/04];

(d) DPF-112B, Resource Home Exception Plan, edition 6/06 [6/04];


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MARK D. BIRDWISTELL, Secretary
MIKE BURNSIDE, Deputy Secretary

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: David Gayle

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the process of determining an applicant's capacity for foster and adoptive parenthood and the requirements for resource homes and respite care providers caring for foster or adoptive children.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to provide standards for resource homes and respite care providers who care for foster or adoptive children.

(c) How this administrative regulation establishes requirements for resource homes and respite care providers and therefore, conforms to the content of the authorizing statutes: This administrative regulation conforms to KRS 605.100(1) by providing for the specialized treatment of children according to their respective problems, needs, and characteristics, and to KRS 199.472 and 605.150, by establishing the process of determining an applicant's capacity for foster or adoptive parenthood.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes the process of determining an applicant's capacity for foster or adoptive parenthood, as required by KRS 199.472 and 605.150 and provides for the specialized treatment of children according to their respective problems, needs, and characteristics, as required by KRS 605.100(1).

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

(a) How the amendment will change this administrative regulation: This amendment corrects the definition of health professional; requires resource home parent applicants to show proof of citizenship or legal immigrant status and income separate from the foster care or adoption assistance reimbursement and to have a working telephone within their homes; requires annual tuberculosis testing of resource home parents in accordance with accreditation standards established by the Council on Accreditation of Child and Family Services; provides greater flexibility to resource home parents in their utilization of respite care; changes respite care provider requirements, and improves the outline of cabinet procedures related to the review of a resource home.

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation further aligns the department's policy and procedures with the standards established by the Council on Accreditation of Child and Family Services. The amendment is necessary to better ensure the safety of children in resource homes and the stability of a child's placement within a resource home. The amendment modifies requirements of respite care providers to better ensure that respite care services are available to resource home parents and are more consistent with resource home parents' needs.

(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 revising policy and procedures pertaining to resource home parents and respite care providers to ensure that children in the custody of the cabinet receive specialized care and have their individualized needs met with utmost considerations given to their safety and permanency.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will assist in the effective administration of the statutes through its clarification of cabinet policy and procedures pertaining to state-approved foster and adoptive parents and their respite care providers.

(3) List the type and number of individuals, business, organizations, or state and local governments affected by this administrative regulation: The number of families approved for foster and adoptive placement totals 2,998, as of January 13, 2006. This includes 4,209 foster and adoptive parents.

(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 changes, if it is an amendment: This amendment will better safeguard the interests of children placed with resource home parents through enhanced safety provisions and greater flexibility afforded to resource home parents in their selection and utilization of respite care providers.

(5) Provide an estimate of how much it will cost to implement
this administrative regulation:
(a) Initially: There are no additional costs necessary to implement this administrative regulation.
(b) On a continuing basis: There are no additional costs necessary to implement this administrative regulation.
(c) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: 53.2% Federal Title IV-E funds, 48.8% General Funds.
(d) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change, if it is an amendment: This amendment does not directly or indirectly establish or increase any fees. No additional funding will be necessary to implement this administrative regulation.
(e) 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.
(f) TIERRING: Is tiering applied? Tiering is not applied, as this administrative regulation will be applied throughout the state in a like manner.

FEDERAL MANDATE ANALYSIS COMPARISON

Contact Person: David Gayle
1. Federal statute or regulation constituting the federal mandate. 42 U.S.C. 671 (a)(23); 16 C.F.R. 1000 to 1750, 45 C.F.R. Parts 160, 164 and 1355.34.
2. State compliance standards. KRS 1944.050(1), 199.472, 605.100(1), and 605.150.
3. Minimum or uniform standards contained in the federal mandate. 42 U.S.C. 671; 45 C.F.R. Parts 160, 164, and 1355.34.
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

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Community Based Services
Division of Policy Development
(Amended After Comments)

922 KAR 2:240. Kentucky Early Care and Education Trainer's Credential and training approval.

RELATES TO: KRS 164.516(3), 199.894(4), 199.896(15) - (17), 199 898(1)(a),(b), (2), 200.151, 200.711, 42 U.S.C. 9831-9852

STATUTORY AUTHORITY: KRS 194A.050(1), 199.896(17), 199.898(2), 200.703(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the secretary to promulgate regulations necessary to cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. KRS 200.703(3) requires the cabinet to implement programs funded by the Early Childhood Development Authority. KRS 199 896(17) and 199.898(2) requires the cabinet to make available training for child care providers through the development or approval of a model training curriculum and training materials, including video instruction material. This administrative regulation establishes the requirements for an individual to obtain a Kentucky Early Care and Education Trainer's Credential and identifies whom the credential- lated individual may train.

Section 1. Definitions. (1) "Adult learning theory" means the concepts and principles that explain how adults gain knowledge and skills that result in relatively long-term changes in attitude and behavior.
(2) "Childcare health consultant" is defined in 902 KAR 4:130.
(3) "Child development associate" or "CDA" means the nationally recognized credential approved by the Council for Professional Recognition.
(4) "Full-time, paid experience" means working at least thirty (30) hours per week or the equivalent in an early care and education setting.
(5) "Trainer resource orientation" means a cabinet-approved training for a potential trainer as specified in Section 2(3) of this administrative regulation.
(6) "Trainer's seminar" means a cabinet-approved educational seminar which includes training as specified in Section 4 of this administrative regulation.

Section 2. Eligibility Criteria for the Kentucky Early Care and Education Trainer's Credential. An individual shall:
(1) Be at least twenty-one (21) years of age;
(2) Have a high school diploma, or equivalent;
(3) Complete a two (2) hour trainer resource orientation that provides an overview of:
(a) Early care and education systems in Kentucky;
(b) Resources available to assist early care and education professionals;
(4) Have training or experience in the following topics of early care and education:
(a) Child growth and development;
(b) Health, safety, and nutrition;
(c) Professional development;
(d) Learning environments and curriculum;
(e) Child assessments;
(f) Family and community partnerships; and
(g) Program management and evaluation.

Section 3. Application and Approval for a Kentucky Early Care and Education Trainer's Credential. (1) An individual applying for a Kentucky Early Care and Education Trainer's Credential shall:
(a) Complete a "DCC-200, Kentucky Early Care and Education Trainer's Credential Application", which includes documentation that the individual meets the education and work experience requirements for a training level as specified in Sections 5 through 10 of this administrative regulation; and
(b) Submit the required documents of paragraph (a) of this subsection to the cabinet or its designee.
(2) Upon approval of the application described in subsection (1) of this section, the cabinet or its designee shall award the individual a:
(a) Letter of approval; and
(b) Kentucky Early Care and Education Trainer's Credential for a training level specified in Sections 5 through 10 of this administrative regulation.
(3) Until the renewal of a credential, a credentialed trainer shall maintain the same level of credential as the trainer held prior to the adoption of this regulation.

Section 4. Trainer's Seminar. An individual requesting a Kentucky Early Care and Education Trainer's Credential for levels two (2) through five (5) shall complete a fifteen (15) hour trainer's seminar consisting of the following areas:
(1) Principles of learning and barriers to learning;
(2) Ethics and professionalism;
(3) Assessment strategies;
(4) Learning styles and cultural differences;
(5) Designing and planning presentations;
(6) Strategies for Instruction;
(7) Group dynamics and activities;
(8) Creating and maintaining positive learning climates; and
(9) Effecting change in behavior.

Section 5. Level 1 Kentucky Early Care and Education Trainer's Credential Requirements. For a Level 1 Kentucky Early Care and Education Trainer's Credential, an individual:
(1) Shall have three (3) years of full-time, paid experience in the early care and education field, and
(2) May only train as a co-trainer on a single topic of early care and education, as specified in Section 2(4) of this administrative regulation, with a credentialed trainer at a higher level.

Section 6. Level 2 Kentucky Early Care and Education Trainer's Credential Requirements. (1) For a Level 2 Kentucky
Early Care and Education Trainer's Credential, an individual shall:
(a) Have:
   1. A CDA; and
   b. Three (3) years of full-time, paid experience, or equivalent, as approved by the cabinet in the early care and education field; or
   2. Ten (10) years of full-time, paid experience in a field related to early care and education as approved by the cabinet and formal early care and education training consisting of at least:
      a. Forty-five (45) clock hours; or
      b. Four and one-half (4.5) continuing education units; or
      c. Three (3) college credit hours;
   (b) Complete the trainer's seminar requirements as specified in Section 4 of this administrative regulation, or equivalent, approved by the cabinet or its designee.
   (2) An individual who is awarded a level two (2) Kentucky Early Care and Education Trainer's Credential may provide training to an individual who is training to meet the:
      (a) Training requirements as specified in KRS 199.896(15) and (16), 199.8982(1)(a)6 and (2), 922 KAR 2:100, 2:110, 2:170, 2:180, 2:210, or 2:250;
      (b) Final sixty (60) hours required for the CDA if co-training with a Level 4 or Level 5 credentialed trainer; or
      (c) Requirements for a Level 1 through Level 5 Kentucky Early Care and Education Trainer's Credential.

Section 7. Level 3 Kentucky Early Care and Education Trainer's Credential Requirements. (1) For a Level 3 Kentucky Early Care and Education Trainer's Credential, an individual shall:
   (a) Have:
      1. Three (3) years of full-time, paid experience in the early care and education field and:
         a. An associate degree in early care and education; or
         b. The equivalent of thirty (30) credit hours in early care and education coursework;
      2. One (1) year of full-time, paid experience in the early care and education field and a bachelor's degree in a field related to early care and education; or
      3. Ten (10) years of full-time, paid experience in the early care and education field and a bachelor's degree in a field not related to early care and education;
      4. An associate degree in nursing, dietetics, or other cabinet-approved related field, if a childcare health consultant; and
      (b) Complete the trainer's seminar requirements as specified in Section 4 of this administrative regulation, or equivalent, as approved by the cabinet or its designee.
   (2) An individual who is awarded a level three (3) Kentucky Early Care and Education Trainer's Credential may provide training to an individual who is training to meet the:
      (a) Training requirements as specified in KRS 199.896(15) and (16), 199.8982(1)(a)6 and (2), 922 KAR 2:100, 2:110, 2:170, 2:180, 2:210, or 2:250;
      (b) Requirements of the CDA; or
      (c) Requirements of a level one (1) through three (3) Kentucky Early Care and Education Trainer's Credential.

Section 8. Level 4 Kentucky Early Care and Education Trainer's Credential Requirements. (1) For a Level 4 Kentucky Early Care and Education Trainer's Credential, an individual shall:
   (a) Have:
      1. One (1) year of full-time, paid experience in the early care and education field and a bachelor's degree in early care and education;
      2. One (1) year of full-time, paid experience in the early care and education field and:
         a. A bachelor's degree in a field related to early care and education; or
         b. The equivalent of three (3) credit hours in child development;
      3. At least ten (10) years of full-time, paid experience in the early care and education field and:
         a. A bachelor's degree in a field not related to early care and education; and
         b. The equivalent of three (3) credit hours in child development; or
      4. A bachelor's degree in nursing, dietetics, or other cabinet-approved related field, if a childcare health consultant; and
      (b) Complete the trainer's seminar requirements as specified in Section 4 of this administrative regulation, or equivalent, as approved by the cabinet or its designee.
   (2) An individual who is awarded a Level 4 Kentucky Early Care and Education Trainer's Credential may provide training to an individual who is training to meet the:
      (a) Training requirements as specified in KRS 199.896(15) and (16), 199.8982(1)(a)6 and (2), 922 KAR 2:100, 2:110, 2:170, 2:180, 2:210, or 2:250;
      (b) Requirements of the CDA; or
      (c) Requirements for a Level 1 through Level 4 Kentucky Early Care and Education Trainer's Credential.

Section 9. Level 5 Kentucky Early Care and Education Trainer's Credential Requirements. (1) For a Level 5 Kentucky Early Care and Education Trainer's Credential, an individual shall:
   (a) Have one (1) year of full-time, paid experience in the early care and education field and:
      1. Master's degree or higher in early care and education;
      2. Master's degree in a field related to early care and education with three (3) credit hours in child development; or
      3. Master level degree in nursing, dietetics, or other related field, if a childcare health consultant; and
      (b) Complete the trainer's seminar requirements as specified in Section 4 of this administrative regulation, or equivalent, as approved by the cabinet or its designee.
   (2) An individual who is awarded a Level 5 Kentucky Early Care and Education Trainer's Credential may provide training to an individual who is training to meet the:
      (a) Training requirements as specified in KRS 199.896(15) and (16), 199.8982(1)(a)6 and (2), 922 KAR 2:100, 2:110, 2:170, 2:180, 2:210, and 2:250;
      (b) Requirements of the CDA; or
      (c) Requirements for a Level 1 through Level 5 Kentucky Early Care and Education Trainer's Credential.

Section 10. Specialty Level Kentucky Early Care and Education Trainer's Credential Requirements. (1) To receive a Specialty Level Kentucky Early Care and Education Trainer's Credential, an individual shall have in their area of expertise:
   (a) A license, certificate, or credential; and
   (b) Three (3) years of related experience.
   (2) A Specialty Level Kentucky Early Care and Education Trainer may provide training in their approved area of expertise to an individual who is training to meet:
      (a) Training requirements as specified in KRS 199.896(15) and (16), 199.8982(1)(a)6 and (2), 922 KAR 2:100, 2:110, 2:170, 2:180, 2:210, and 2:250;
      (b) Requirements of the CDA; or
      (c) Requirements for a Level 1 through Level 5 Kentucky Early Care and Education Trainer's Credential.

Section 11. General Training Requirements. (1) Except for an employee of a child care center program authorized by 42 U.S.C. 9831-9832, no owner or employee holding a Kentucky Early Care and Education Trainer's Credential shall train an employee of the same child care center or family care home to meet the training requirements:
   (a) In KRS 199.896(15) and (16), 199.8982(1)(a)6 and (2), 922 KAR 2:100, 2:110, 2:170, 2:180, 2:210, or 2:250;
   (b) The CDA; or
   (c) Of a Level 1 through Level 5 Kentucky Early Care and Education Trainer's Credential.
   (2) The cabinet may monitor training events for compliance with this administrative regulation.
   (3) A trainer shall have a current Kentucky Early Care and Education Trainer's Credential to be eligible to train individuals to meet the:
      (a) Training requirements as specified in KRS 199 896(15) and (16), 199.8982(1)(a)6 and (2), 922 KAR 2:100, 2:110, 2:170, 2:180,
Section 12. Renewal of a Kentucky Early Care and Education Trainer's Credential. (1) A Level 1 Kentucky Early Care and Education Trainer's Credential shall:
(a) Be valid for three (3) years; and
(b) Not be renewable.
(2) A Level 2 through Level 5 Kentucky Early Care and Education Trainer's Credential and Specialty Level Kentucky Early Care and Education Trainer's Credential shall be renewed every three (3) years.
(3) A trainer renewing a Level 2 through Level 4 Kentucky Early Care and Education Trainer's Credential shall submit to the cabinet or its designee:
(a) A completed DCC-200; and
(b) Documentation of forty-five (45) hours of continuing education since the previous issue date of credential to include:
1. Fifteen (15) hours in adult learning theory; and
2. Thirty (30) hours in early care and education.
(4) A trainer renewing a Level 5 Kentucky Early Care and Education Trainer's Credential shall submit to the cabinet or its designee a completed DCC-200.
(5) A trainer renewing a Specialty Level Kentucky Early Care and Education Trainer's Credential shall submit to the cabinet or its designee:
(a) A completed DCC-200; and
(b) Proof of current license, certificate, or credential in the trainer's area of expertise.
(6) Upon receipt and approval of the required documentation of subsections (3) through (5) of this section, the cabinet or its designee shall award the individual a:
(a) Letter of approval; and
(b) Renewed Kentucky Early Care and Education Trainer's Credential for the appropriate level.

Section 13. Denial of Application or Renewal. (1) The cabinet shall deny a Kentucky Early Care and Education Trainer's Credential, if the individual fails to comply with:
(a) Sections 2 through 4 of this administrative regulation; and
(b) Section 5, 6, 7, 8, 9, or 10 of this administrative regulation.
(2) The cabinet shall not renew a Kentucky Early Care and Education Trainer's Credential for an individual who fails to comply with Section 12 of this administrative regulation.
(3) Individuals denied a Kentucky Early Care and Education Trainer's Credential have the right to request a review of the denial by the Commissioner of the Department for the Community Based Services or designee.

Section 14. Revocation of Credential. (1) The cabinet shall revoke a Kentucky Early Care and Education Trainer's Credential from a trainer who falsifies a record.
(2) An individual whose credential has been revoked may:
(a) Reapply after a two (2) year period for a Kentucky Early Care and Education Trainer's Credential; or
(b) Request a hearing as specified in 922 KAR 1:320.

Section 15. Approval of Conferences, Seminars, and Institutes. (1) Conferences, seminars, and institutes using an individual holding a current Kentucky Early Care and Education Trainer's Credential shall be registered through the cabinet for approval to train for:
(a) Training requirements as specified in KRS 199.896(15) and (16), 199.898(2), 922 KAR 2:100, 2:110, 2:170, 2:180, 2:210, and 2:250;
(b) Requirements of the CDA; or
(c) Requirements of a Level 1 through Level 5 Kentucky Early Care and Education Trainer's Credential.
(2) Each training event using a trainer not approved for a Kentucky Early Care and Education Trainer's Credential shall apply thirty (30) days prior to the date of the event. The cabinet shall make a determination within ten (10) working days of receipt of a complete application.
(3) An individual applying for a conference, seminar, or institute shall submit:
(a) A description of the event including:
1. Agenda;
2. Training topics; and
3. Overall objectives;
(b) Event's relevance to early care and education as described in Section 2(6) of this administrative regulation; and
(c) A completed "DCC-201, Application for Registration of Conference, Seminar, and Institute".
(4) Trainers shall be identified and a resume or vita shall be attached to the application described in subsection (3)(c) of this section.
(5) Approval for each invited speaker, keynote speaker, and platform participant shall apply only to the event approved by the cabinet.
(6) If a nationally-recognized organization holds a conference, seminar, or institute related to early care and education as described in Section 2(4) of this administrative regulation, the cabinet may:
(a) Issue preapproval; and
(b) Make a list of preapproved conferences, seminars, and institutes available to the public.

Section 16. Maintenance of Records. (1) Credential holders shall:
(a) Maintain records of training provided and trainees; and
(b) Provide records of training provided and trainees to the cabinet upon request, or
2. Enter information from records required in paragraph (a) of this subsection into the database provided by the cabinet.
(2) Cabinet staff shall maintain a database of credential holders.

Section 17. Incorporation by Reference. (1) The following material is incorporated by reference:
(a) "DCC-200, Kentucky Early Care and Education Trainer's Credential Application, edition 01/06".
(b) "DCC-201, Application for Registration of Conference, Seminar, and Institute, edition 01/06".
(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.

MARK D. BIRDWHISTELL, Secretary
MIKE BURNSIDE, Deputy Secretary
TOM EMERSON, JR., Commissioner
APPROVED BY AGENCY: June 13, 2006
FILED WITH LRC: June 13, 2006 at 4 p.m.
CONTACT PERSON: Jill Brown, Office of Legal Services, 275 East Main Street 5W-B, Frankfort, Kentucky 40621, phone (502) 564-7905, fax (502) 564-7573.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT
Contact Person: David Gayle
(3) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation sets forth the requirements for an individual to obtain a Kentucky Early Care and Education Trainer's Credential and identifies whom the credentialled trainer may train.
(b) The necessity of this administrative regulation: This administrative regulation is necessary to cooperate with other state agencies for the proper administration of the cabinet's programs and to provide a model training curriculum and training materials.
(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 194A.050(1) requires the cabinet to promulgate regulations necessary to cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. KRS 200.703(3) requires the cabinet to implement programs funded by the Early Childhood Development Authority. KRS 199.896(17) and 199.898(3) requires the cabinet to make available training for child care providers through the development or approval of a model training curriculum and training materials. This administrative regulation conforms to the content of the authorizing statute by establishing the requirements for an individual to obtain a Kentucky Early Care and Education Trainer's Credential and identifies whom the credential/trainer may train.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: KRS 194A.050(1) requires the cabinet to promulgate regulations necessary to cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. KRS 200.703(3) requires the cabinet to implement programs funded by the Early Childhood Development Authority. KRS 199.896(17) and 199.898(3) requires the cabinet to make available training for child care providers through the development or approval of a model training curriculum and training materials. This administrative regulation will assist in the effective administration of the statutes by establishing the requirements for an individual to obtain a Kentucky Early Care and Education Trainer's Credential and identifies whom the credential/trainer may train.

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

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

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

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

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

(3) List the type and number of individuals, business, organizations, or state and local governments affected by this administrative regulation: The entities affected by this administrative regulation include anyone who would like to receive a Kentucky Early Care and Education Trainer's Credential and the 796 individuals who have already received a Kentucky Early Care and Education Trainer's Credential.

(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: Individuals authorized to train child care providers will have a clearer understanding of the requirements to be a trainer of child care providers.

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

(a) Initially: No additional costs to the cabinet.

(b) On a continuing basis: No additional costs to the cabinet.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Administrative costs of this program are through a contract with the University of Kentucky paid with tobacco dollars. A very small amount of CCDF funds are used to issue the credentials.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied. Policy is applied in a like manner for all individuals training child care providers.
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PROPOSED AMENDMENTS RECEIVED THROUGH NOON, JUNE 15, 2006

KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY
Division of Student and Administrative Services
(Amendment)

11 KAR 3:100. Administrative wage garnishment.

RELATES TO: KRS 164.744(1), 164.748(4), (10), (20)
164.753(2), 34 C.F.R. 682.410(b)(10), 20 U.S.C. 1071-1087-2,
1095a

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

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

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

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

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

(a) The name and address of the debtor;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) A person, upon request, shall receive a copy of the official
record at the cost of the requester. The party requesting a record-
ing or transcript of the hearing shall be responsible for transcription
costs. The official record of the hearing shall consist of:

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1. All notices, pleadings, motions, and intermediate rulings;
2. Any prehearing order;
3. Evidence received and considered;
4. A statement of matters officially noticed;
5. Profers of proof and objections and rulings thereon;
6. Ex parte communications placed upon the record by the hearing officer;
7. A recording or transcript of the proceedings; and
8. The hearing officer's decision or an order of the hearing officer issued pursuant to Section 3(2)(e) of this administrative regulation.

(3)(a) Following the issuance of the hearing officer's decision, the debtor or the authority may petition the board to review the decision.
(b) An adverse decision by the hearing officer shall be appealed in writing to the board not later than twenty (20) calendar days after the date of the hearing officer's decision. A petition for review of the hearing officer's decision shall be timely filed if received by the executive director within twenty (20) calendar days after the date of the hearing officer's decision. If there is no appeal to the board within twenty (20) days, the findings of the hearing officer shall be conclusive and binding upon the parties.
(c) A petition for review of the hearing officer's decision shall not stay a final order pending the outcome of the review. If the debtor's liability is established by the hearing officer's decision, an administrative order for withholding of disposable pay shall be issued by the authority within sixty (60) days after the date of the hearing officer's decision. If the debtor petitions the board to review the hearing officer's decision and obtains reversal, modification or remand of the hearing officer's decision, the authority shall return to the debtor any money received pursuant to the withholding order contrary to the final order of the board.
(d) The respondent may, within ten (10) calendar days from the date the petition was received by the executive director, provide a responsive argument to the petition of review. The response shall be timely filed if received by the executive director within ten (10) calendar days from receipt by the executive director of the petition for review.
(e) A petition for review of the hearing officer's decision shall contain the following information:
1. A concise statement of the reason that the petitioner asserts as the basis pursuant to paragraph (g) of this subsection for reversing, modifying or remanding the hearing officer's decision or an order of the hearing officer issued pursuant to Section 3(2)(e) of this administrative regulation;
2. A statement specifying the part of the official record that the petitioner relies upon to support reversing, modifying or remanding the hearing officer's decision pursuant to paragraph (g) of this subsection; and
3. A statement of whether the petitioner believes that oral argument to the board is necessary.
(f) The board shall review the hearing officer's decision at its next regularly scheduled meeting convened at least thirty (30) days after the petition for review of the hearing officer's decision is received or at a special meeting convened for that purpose within ninety (90) days after receipt of the petition for review of the hearing officer's decision, whichever first occurs.
(g) The board shall decide the dispute upon the official record, unless there is fraud or misconduct involving a party, and may consider oral arguments by the debtor and the authority. The board shall:
1. Not substitute its judgment for that of the hearing officer as to the weight of the evidence on questions of fact; and
2. a. Uphold the hearing officer's decision unless it is clearly unsupported by the evidence and the applicable law;
   b. Reject or modify, in whole or in part, the hearing officer's decision; or
   c. Remand the matter, including an order of the hearing officer issued pursuant to Section 3(2)(e) of this administrative regulation, in whole or in part, to the hearing officer for further proceedings as appropriate if it finds the hearing officer's final order is:
   (i) In violation of constitutional or statutory provisions;
   (ii) In excess of the statutory authority of the agency;
   (iii) Without support of substantial evidence on the whole record;
   (iv) Arbitrary, capricious, or characterized by abuse of discretion; or
   (v) Based on an ex parte communication which substantially prejudiced the rights of a party and likely affected the outcome of the hearing.
(h) The final order of the board shall be in writing. If the final order differs from the hearing officer's decision, it shall include separate statements of findings of fact and conclusions of law.
(i) The remedies provided in this section shall not:
   (a) Preclude the use of other judicial or administrative remedies available to the authority under state or federal law; and
   (b) Be construed to stay the use of another remedy.

Section 3. Hearing Procedure. (1) The debtor shall have the right to be heard by the hearing officer, be represented by counsel, present evidence, cross examine, and make both opening and closing statements.
(2)(a) Upon request of a party, the hearing officer may issue subpoena for the production of a document or attendance of a witness.
(b) Not more than ten (10) business days after the date of filing the request for a hearing or a review of written material, the debtor shall submit to the counsel for the authority a written statement specifically stating the basis of dispute.
2. Not less than fifteen (15) business days prior to the hearing, the parties shall:
   a. Confer and jointly stipulate the issues that are in controversy to be resolved by the hearing officer;
   b. Discuss the possibility of informal resolution of the dispute;
   c. Exchange a witness list of the names, addresses, and phone numbers of each witness expected to testify at the hearing and a brief summary of the testimony of each witness that the party expects to introduce into evidence; and
   d. Exchange an exhibit list identifying documents to be admitted into evidence at the hearing and provide a legible copy of all exhibits.
3. If the debtor is unavailable or otherwise fails to confer and jointly stipulate the issues pursuant to subparagraph 2 of this paragraph, the authority shall serve upon the debtor proposed stipulation of issues. If within five (5) calendar days, the debtor fails to respond to the proposed stipulation of issues, the debtor shall be precluded from raising an additional issue not identified in the proposed stipulation of issues.
4. If the debtor is unavailable or otherwise fails to cooperate in a timely manner for the exchange of the witness or exhibit lists, the debtor shall be precluded from admitting the information as part of the evidence at the hearing.
5. The authority shall provide to the hearing officer the documentation submitted in accordance with subparagraph 1 of this paragraph and shall report to the hearing officer the results of the discussions between the parties described in subparagraphs 2 and 3 of this paragraph.
6. Additional time for compliance with the requirements of this paragraph may be granted by the hearing officer, upon request, if it does not prejudice the rights of the authority or delay the rendering of a hearing decision within the time prescribed by Section 2(2) of this administrative regulation.
7. If the debtor requests a hearing, but the debtor's written statement and supporting documentation, considered from a viewpoint most favorable to the debtor, does not reflect a genuine issue of fact or prima facie defense to the legal enforceability of the authority's claim, the hearing officer, on petition of the authority and notice to the debtor, may enter an order dismissing the request for a hearing and authorizing issuance of the order described in Section 5 of this administrative regulation.
8. Facts recited in the authority's notice pursuant to Section 1(3)(c) of this administrative regulation that are not denied shall be deemed admitted. Each party shall remain under an obligation to disclose new or additional items of evidence or witnesses which may come to their attention as soon as practicable.
9. Either party, without leave of the hearing officer, may depose a witness, upon reasonable notice to the witness and the opposing party, and submit to the opposing party interrogatories or
request for admissions.
2. The party receiving interrogatories or request for admissions shall respond within fifteen (15) calendar days.
3. Each matter of which an admission is requested shall be deemed admitted unless, within fifteen (15) days after service of the request or a shorter or longer time that the hearing officer may allow, the party to whom the request is directed serves upon the party requesting the admission a written answer or objection addressed to the matter.
   (e) Sufficient grounds for entry of an appropriate order by the hearing officer, including postponement, exclusion of evidence, dismissal of the appeal, quashing the withholding order, or vacating the stay, shall exist if there is:
   1. Noncompliance with this subsection;
   2. Failure of the authority to:
      a. Timely appoint a hearing officer; or
      b. Respond to a request for inspection of records; or
   3. Failure of the debtor to submit information in accordance with paragraph (b) of this subsection.
4. Order of proceeding.
   (a) The hearing officer shall:
      1. Convene an in-person or telephonic hearing;
      2. Identify the parties to the action and the persons participating;
      3. Admit into evidence the notice required by Section 13(3) of this administrative regulation and the debtor’s statement and the stipulations required by subsection 2(b)(1) and 2 of this section;
   5. Solicit from the parties and dispose of any objections or motions;
   6. Accept into evidence any documentary evidence not objected to;
   7. Solicit opening statements; and
   8. Proceed with the taking of proof.
   (b) The taking of proof shall commence first by the debtor and then by the authority, with opportunities for cross-examination, rebuttal, and closing statements.
   (a) All testimony shall be made under oath or affirmation.
   1. The hearing officer shall not admit evidence that is excludable as a violation of an individual’s constitutional or statutory rights or a privilege recognized by the courts of the commonwealth.
   2. Statutes or judicial rules pertaining to the admission of evidence in a judicial proceeding shall not apply to a hearing under this section.
   3. The hearing officer may receive evidence deemed reliable and relevant, including evidence that would be considered hearsay if presented in court, except that hearsay evidence shall not be sufficient in itself to support the hearing officer’s decision.
   4. A copy of a document shall be admissible if:
      a. There is minimal authentication to establish a reasonable presumption of its genuineness and accuracy; or
      b. It is admitted without objection.
   5. The hearing officer may exclude evidence deemed unreliable, irrelevant, incompetent, immaterial, or unduly repetitious.
   (b) An objection to an evidentiary offer may be made by any party and shall be noted in the record.
   (c) The hearing officer:
      1. May take official notice of:
         a. Statutes and administrative regulations;
         b. Facts which are not in dispute; and
         c. Generally-recognized technical or scientific facts;
      2. Shall notify all parties, either before or during the hearing of a fact so noticed and its source; and
      3. Shall give each party an opportunity to contest facts officially noticed.
   (d) At the discretion of the hearing officer, the parties may be allowed up to fifteen (15) days following the hearing to submit written arguments or briefs.
   (e) Upon request of either party, the record of the hearing shall be transcribed, and shall be available to the parties at their own expense.
   (f) Burden of proof.
   (a) The authority shall have the burden to establish the existence and amount of the debt.
   (b) The debtor shall have the burden to establish an affirmative defense.
   (c) The party with the burden of proof on an issue shall have the burden of going forward and the ultimate burden of persuasion as to that issue. The ultimate burden of persuasion shall be met by a prima facie establishment of relevant, uncontroverted facts or, if relevant facts are disputed, a preponderance of evidence in the record.
   (d) Failure to meet the burden of proof shall be grounds for a summary order from the hearing officer.
Section 4, Defenses. (1) Except as provided in subsection (2) of this section, a debtor may assert a defense to the issuance of an administrative order to withhold the debtor’s disposable pay, legal or equitable, pertaining to the existence or amount of the debt or the terms of a proposed repayment schedule under the garnishment order (other than a repayment schedule agreed to in writing pursuant to Section 13(3)(g) of this administrative regulation).
(2) The hearing officer shall not consider as a defense a question of law or fact that has previously been adjudicated by a court of competent jurisdiction or by an independent third-party trier of fact in an administrative proceeding involving the debtor and the authority pertaining to the existence, amount, or the debtor’s liability on the particular debt in question or the terms of a prior repayment schedule.
3. If the debtor asserts as a defense a question of law or fact that was previously raised in an administrative proceeding before the authority pursuant to 11 KAR 4:030 or 11 KAR 4:050, the hearing officer:
   (a) Shall:
      1. Consider the matter; and
      2. Give deference to the prior decision by the authority in the same manner that a court would give deference in reviewing the decision of an administrative agency; and
   (b) May reverse the prior decision if the debtor presents evidence that:
      1. Circumstances have changed or new information is available; or
      2. The prior decision:
         a. Substantially disregarded or ignored the defense; or
         b. Was arbitrary, capricious, not supported by the facts or made through fraud.
(4) If the debtor asserts as a defense a claim of entitlement to discharge of the particular debt pursuant to 34 C.F.R. 682.402, except for reason of bankruptcy, but has not previously sought discharge by the authority for that specific reason, the hearing officer shall stay the hearing for a period sufficient to permit the debtor to submit documentation to the authority for a determination of eligibility for entitlement to discharge. At the expiration of the period of stay, the hearing officer shall review the circumstances and:
   (a) Uphold the right of the authority to issue an order of wage withholding if the debtor has failed to submit documentation to the authority for review of entitlement to discharge;
   (b) Dismiss the request for hearing if the debtor has submitted documentation and the authority has approved discharge of the debt; or
   (c) Proceed with the hearing if the debtor submitted documentation and the authority denied discharge, except that the hearing officer shall consider the defense of entitlement to discharge in accordance with subsection (3) of this section.
(5) If the debtor asserts as a defense a claim that the debt was dischargeable in a previous bankruptcy pursuant to 11 U.S.C. 523(a)(5), but the debtor did not previously seek discharge by the bankruptcy court, the hearing officer shall stay the hearing for a period sufficient to permit the debtor to reopen the bankruptcy case. At the expiration of the period of stay, the hearing officer shall review the circumstances and:
   (a) Uphold the right of the authority to issue an order of wage withholding if the debtor has failed to obtain the bankruptcy court’s permission to reopen the bankruptcy case to seek discharge of the particular debt; or
   (b) Dismiss the request for hearing if the bankruptcy court has reopened the bankruptcy case to consider discharge of the par-
ticular debt.

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

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

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

<table>
<thead>
<tr>
<th>Size of family unit</th>
<th>Poverty guideline</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>$9,600</td>
</tr>
<tr>
<td>2</td>
<td>$13,500</td>
</tr>
<tr>
<td>3</td>
<td>$16,600</td>
</tr>
<tr>
<td>4</td>
<td>$20,000</td>
</tr>
<tr>
<td>5</td>
<td>$23,400</td>
</tr>
<tr>
<td>6</td>
<td>$26,800</td>
</tr>
<tr>
<td>7</td>
<td>$30,500</td>
</tr>
<tr>
<td>8</td>
<td>$33,500</td>
</tr>
<tr>
<td>Each additional person</td>
<td>Add $3,400</td>
</tr>
</tbody>
</table>

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

<table>
<thead>
<tr>
<th>Size of family unit</th>
<th>Poverty guidelines</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>$12,250</td>
</tr>
<tr>
<td>2</td>
<td>$16,500</td>
</tr>
<tr>
<td>3</td>
<td>$20,750</td>
</tr>
</tbody>
</table>

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

<table>
<thead>
<tr>
<th>Size of family unit</th>
<th>Poverty guidelines</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>$11,270</td>
</tr>
<tr>
<td>2</td>
<td>$15,100</td>
</tr>
<tr>
<td>3</td>
<td>$19,000</td>
</tr>
<tr>
<td>4</td>
<td>$23,000</td>
</tr>
<tr>
<td>5</td>
<td>$26,910</td>
</tr>
<tr>
<td>6</td>
<td>$30,820</td>
</tr>
<tr>
<td>7</td>
<td>$34,730</td>
</tr>
<tr>
<td>8</td>
<td>$38,640</td>
</tr>
<tr>
<td>Each additional person</td>
<td>Add $3,910</td>
</tr>
</tbody>
</table>

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

<table>
<thead>
<tr>
<th>Debtors Available Resources</th>
<th>Less than $5,000</th>
<th>$5,000 to $9,999</th>
<th>$10,000 to $19,999</th>
<th>$20,000 to $29,999</th>
<th>$30,000 to $39,999</th>
<th>$40,000 to $49,999</th>
<th>$50,000 to $69,999</th>
<th>$70,000 and over</th>
</tr>
</thead>
<tbody>
<tr>
<td>Owned dwelling</td>
<td>1.061</td>
<td>1.069</td>
<td>1.059</td>
<td>1.059</td>
<td>1.059</td>
<td>1.059</td>
<td>1.059</td>
<td>1.059</td>
</tr>
<tr>
<td>Rented dwelling</td>
<td>2.756</td>
<td>2.825</td>
<td>3.333</td>
<td>3.687</td>
<td>3.687</td>
<td>3.687</td>
<td>3.687</td>
<td>3.687</td>
</tr>
<tr>
<td>Other lodging</td>
<td>75</td>
<td>101</td>
<td>72</td>
<td>103</td>
<td>160</td>
<td>210</td>
<td>325</td>
<td>546</td>
</tr>
<tr>
<td>Utilities, fuels, and public services</td>
<td>1.193</td>
<td>1.454</td>
<td>1.833</td>
<td>2.223</td>
<td>2.438</td>
<td>2.735</td>
<td>2.962</td>
<td>3.328</td>
</tr>
<tr>
<td>Household services</td>
<td>168</td>
<td>231</td>
<td>788</td>
<td>336</td>
<td>574</td>
<td>385</td>
<td>441</td>
<td>544</td>
</tr>
</tbody>
</table>
### Housing and Miscellaneous Supplies

<table>
<thead>
<tr>
<th>Category</th>
<th>New York</th>
<th>Philadelphia</th>
<th>Boston</th>
<th>Pittsburgh</th>
</tr>
</thead>
<tbody>
<tr>
<td>Owned dwellings</td>
<td>1,845</td>
<td>6,240</td>
<td>6,882</td>
<td>4,314</td>
</tr>
<tr>
<td>Rented dwellings</td>
<td>4,190</td>
<td>2,248</td>
<td>3,198</td>
<td>1,673</td>
</tr>
<tr>
<td>Other lodging</td>
<td>710</td>
<td>526</td>
<td>477</td>
<td>435</td>
</tr>
<tr>
<td>Utilities, fuels, and public services</td>
<td>3,248</td>
<td>3,312</td>
<td>2,822</td>
<td>2,954</td>
</tr>
<tr>
<td>Household services</td>
<td>1,067</td>
<td>674</td>
<td>903</td>
<td>559</td>
</tr>
<tr>
<td>Housekeeping and miscellaneous supplies</td>
<td>547</td>
<td>535</td>
<td>663</td>
<td>528</td>
</tr>
<tr>
<td>Household furnishings and equipment</td>
<td>1,799</td>
<td>1,884</td>
<td>1,403</td>
<td>1,649</td>
</tr>
<tr>
<td>Vehicle purchases (net-outlay)</td>
<td>2,672</td>
<td>3,022</td>
<td>3,433</td>
<td>2,483</td>
</tr>
<tr>
<td>Gasoline and motor-oil</td>
<td>1,189</td>
<td>1,213</td>
<td>1,293</td>
<td>1,256</td>
</tr>
<tr>
<td>Other vehicle expenses (repairs, insurance, lease, license, and other charges)</td>
<td>2,722</td>
<td>2,347</td>
<td>2,128</td>
<td>2,365</td>
</tr>
<tr>
<td>Public transportation</td>
<td>1,007</td>
<td>465</td>
<td>529</td>
<td>379</td>
</tr>
</tbody>
</table>

### Housing and Miscellaneous Supplies

<table>
<thead>
<tr>
<th>Category</th>
<th>New York</th>
<th>Philadelphia</th>
<th>Boston</th>
<th>Pittsburgh</th>
</tr>
</thead>
<tbody>
<tr>
<td>Owned dwellings</td>
<td>7.640</td>
<td>6.552</td>
<td>6.318</td>
<td>4.662</td>
</tr>
<tr>
<td>Rented dwellings</td>
<td>4.068</td>
<td>4.267</td>
<td>4.883</td>
<td>1.481</td>
</tr>
<tr>
<td>Other lodging</td>
<td>696</td>
<td>454</td>
<td>623</td>
<td>486</td>
</tr>
<tr>
<td>Utilities, fuels, and public services</td>
<td>3.066</td>
<td>3.405</td>
<td>2.574</td>
<td>2.902</td>
</tr>
<tr>
<td>Household services</td>
<td>1.413</td>
<td>289</td>
<td>272</td>
<td>639</td>
</tr>
<tr>
<td>Housekeeping and miscellaneous supplies</td>
<td>663</td>
<td>617</td>
<td>407</td>
<td>532</td>
</tr>
<tr>
<td>Household furnishings and equipment</td>
<td>1.796</td>
<td>1.537</td>
<td>1.212</td>
<td>1.208</td>
</tr>
<tr>
<td>Vehicle purchases (net-outlay)</td>
<td>2.028</td>
<td>2.399</td>
<td>3.518</td>
<td>2.768</td>
</tr>
</tbody>
</table>
### VOLUME 33, NUMBER 1 – JULY 1, 2006

<table>
<thead>
<tr>
<th>Debtor's Available Resources</th>
<th>Less than $5,000</th>
<th>$5,000 to $9,999</th>
<th>$10,000 to $14,999</th>
<th>$15,000 to $19,999</th>
<th>$20,000 to $29,999</th>
<th>$30,000 to $39,999</th>
<th>$40,000 to $49,999</th>
<th>$50,000 to $59,999</th>
<th>$60,000 to $69,999</th>
<th>$70,000 and over</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Gasoline and motor oil</strong></td>
<td>1,101</td>
<td>1,442</td>
<td>1,469</td>
<td>1,659</td>
<td>1,684</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Other vehicle expenses</strong></td>
<td>2,668</td>
<td>2,668</td>
<td>2,074</td>
<td>2,074</td>
<td>2,074</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Public transportation</strong></td>
<td>1,042</td>
<td>374</td>
<td>424</td>
<td>393</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

3.a. If the debtor resides in Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska, North Dakota, Ohio, South Dakota, or Wisconsin, except for a metropolitan area listed in clause 6 of this subparagraph, actual annual expenditures by the debtor's family that exceed the applicable amount for a category, based on the debtor's available resources, shall be presumed unnecessary:

<table>
<thead>
<tr>
<th>Debtor's Available Resources</th>
<th>Less than $5,000</th>
<th>$5,000 to $9,999</th>
<th>$10,000 to $14,999</th>
<th>$15,000 to $19,999</th>
<th>$20,000 to $29,999</th>
<th>$30,000 to $39,999</th>
<th>$40,000 to $49,999</th>
<th>$50,000 to $59,999</th>
<th>$60,000 to $69,999</th>
<th>$70,000 and over</th>
</tr>
</thead>
<tbody>
<tr>
<td>Owned dwelling</td>
<td>1,739</td>
<td>941</td>
<td>1,880</td>
<td>2,578</td>
<td>2,460</td>
<td>3,325</td>
<td>4,355</td>
<td>6,210</td>
<td>10,135</td>
<td></td>
</tr>
<tr>
<td>Annual Expenditures</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Renters dwellings</td>
<td>2,168</td>
<td>2,383</td>
<td>2,305</td>
<td>2,528</td>
<td>2,414</td>
<td>2,042</td>
<td>1,722</td>
<td>1,608</td>
<td>580</td>
<td></td>
</tr>
<tr>
<td>Other lodgings</td>
<td>226</td>
<td>134</td>
<td>112</td>
<td>126</td>
<td>186</td>
<td>211</td>
<td>236</td>
<td>460</td>
<td>1,263</td>
<td></td>
</tr>
<tr>
<td>Utilities, fuels and public services</td>
<td>1,448</td>
<td>1,582</td>
<td>2,040</td>
<td>2,407</td>
<td>2,701</td>
<td>2,905</td>
<td>3,315</td>
<td>3,982</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Household operations services</td>
<td>237</td>
<td>127</td>
<td>275</td>
<td>277</td>
<td>950</td>
<td>402</td>
<td>443</td>
<td>602</td>
<td>1,484</td>
<td></td>
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<tr>
<td>Housekeeping and miscellaneous supplies</td>
<td>189</td>
<td>236</td>
<td>383</td>
<td>425</td>
<td>410</td>
<td>557</td>
<td>683</td>
<td>747</td>
<td>1,026</td>
<td></td>
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<tr>
<td>Household furnishings and equipment</td>
<td>354</td>
<td>391</td>
<td>411</td>
<td>550</td>
<td>804</td>
<td>1,205</td>
<td>1,383</td>
<td>1,955</td>
<td>3,596</td>
<td></td>
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<tr>
<td>Vehicle purchases (net outlay)</td>
<td>1,581</td>
<td>933</td>
<td>1,155</td>
<td>1,304</td>
<td>1,262</td>
<td>3,218</td>
<td>4,194</td>
<td>6,723</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Gasoline and motor oil</td>
<td>710</td>
<td>1,209</td>
<td>709</td>
<td>948</td>
<td>1,065</td>
<td>1,371</td>
<td>1,563</td>
<td>1,860</td>
<td>2,272</td>
<td></td>
</tr>
<tr>
<td>Vehicle maintenance and repairs</td>
<td>282</td>
<td>248</td>
<td>454</td>
<td>536</td>
<td>670</td>
<td>789</td>
<td>946</td>
<td>1,060</td>
<td>1,445</td>
<td></td>
</tr>
<tr>
<td>Vehicle insurance</td>
<td>170</td>
<td>128</td>
<td>125</td>
<td>181</td>
<td>255</td>
<td>381</td>
<td>375</td>
<td>618</td>
<td>1,009</td>
<td></td>
</tr>
<tr>
<td>Public transportation</td>
<td>247</td>
<td>135</td>
<td>109</td>
<td>147</td>
<td>194</td>
<td>165</td>
<td>245</td>
<td>383</td>
<td>842</td>
<td></td>
</tr>
</tbody>
</table>

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

<table>
<thead>
<tr>
<th>Debtor's Available Resources</th>
<th>Less than $5,000</th>
<th>$5,000 to $9,999</th>
<th>$10,000 to $14,999</th>
<th>$15,000 to $19,999</th>
<th>$20,000 to $29,999</th>
<th>$30,000 to $39,999</th>
<th>$40,000 to $49,999</th>
<th>$50,000 to $59,999</th>
<th>$60,000 to $69,999</th>
<th>$70,000 and over</th>
</tr>
</thead>
<tbody>
<tr>
<td>Owned-dwelling</td>
<td>1,694</td>
<td>923</td>
<td>1,376</td>
<td>2,441</td>
<td>2,406</td>
<td>3,458</td>
<td>4,665</td>
<td>6,664</td>
<td>10,508</td>
<td></td>
</tr>
<tr>
<td>Annual Expenditures</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Renters-dwellings</td>
<td>2,109</td>
<td>2,264</td>
<td>2,314</td>
<td>2,220</td>
<td>2,402</td>
<td>1,941</td>
<td>1,974</td>
<td>1,567</td>
<td>5,170</td>
<td></td>
</tr>
<tr>
<td>Vehicle purchases (net outlay)</td>
<td>1,444</td>
<td>1,496</td>
<td>3,686</td>
<td>2,969</td>
<td>2,643</td>
<td>9,772</td>
<td>3,140</td>
<td>3,803</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Housekeeping and miscellaneous supplies</td>
<td>377</td>
<td>415</td>
<td>248</td>
<td>262</td>
<td>346</td>
<td>384</td>
<td>464</td>
<td>680</td>
<td>1,472</td>
<td></td>
</tr>
<tr>
<td>Household furnishings and equipment</td>
<td>240</td>
<td>260</td>
<td>340</td>
<td>444</td>
<td>540</td>
<td>686</td>
<td>4,262</td>
<td>970</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Vehicle purchases (net outlay)</td>
<td>1,609</td>
<td>1,352</td>
<td>2,088</td>
<td>1,848</td>
<td>2,684</td>
<td>3,436</td>
<td>4,024</td>
<td>6,666</td>
<td>7,962</td>
<td></td>
</tr>
<tr>
<td>Gasoline and motor oil</td>
<td>653</td>
<td>670</td>
<td>620</td>
<td>652</td>
<td>1,010</td>
<td>1,432</td>
<td>1,400</td>
<td>1,663</td>
<td>2,932</td>
<td></td>
</tr>
<tr>
<td>Vehicle maintenance and repairs</td>
<td>282</td>
<td>231</td>
<td>320</td>
<td>444</td>
<td>449</td>
<td>569</td>
<td>669</td>
<td>873</td>
<td>1,061</td>
<td></td>
</tr>
<tr>
<td>Gasoline and motor oil</td>
<td>278</td>
<td>232</td>
<td>456</td>
<td>601</td>
<td>668</td>
<td>908</td>
<td>942</td>
<td>1,104</td>
<td>1,343</td>
<td></td>
</tr>
<tr>
<td>Vehicle leases, licenses, and other charges</td>
<td>213</td>
<td>138</td>
<td>132</td>
<td>226</td>
<td>286</td>
<td>400</td>
<td>328</td>
<td>665</td>
<td>4,077</td>
<td></td>
</tr>
<tr>
<td>Public transportation</td>
<td>472</td>
<td>441</td>
<td>96</td>
<td>140</td>
<td>271</td>
<td>180</td>
<td>322</td>
<td>334</td>
<td>848</td>
<td></td>
</tr>
</tbody>
</table>

- 167 -
<table>
<thead>
<tr>
<th>Other vehicle expenses (repairs, insurance, lease, license, and other charges)</th>
<th>2.445</th>
<th>3.403</th>
<th>2.028</th>
<th>2.972</th>
<th>2.515</th>
<th>2.242</th>
<th>2.311</th>
<th>2.599</th>
</tr>
</thead>
<tbody>
<tr>
<td>Public transportation</td>
<td>667</td>
<td>482</td>
<td>412</td>
<td>742</td>
<td>250</td>
<td>302</td>
<td>400</td>
<td>224</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>[Chicago</th>
<th>Detroit</th>
<th>Milwaukee</th>
<th>Minneapolis</th>
<th>St-Paul</th>
<th>Cleveland</th>
<th>Cincinnati</th>
<th>St-Louis</th>
<th>Kansas City</th>
</tr>
</thead>
<tbody>
<tr>
<td>Annual Expenditures</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Owned-dwelling</td>
<td>7,323</td>
<td>6,504</td>
<td>5,584</td>
<td>7,366</td>
<td>6,349</td>
<td>4,248</td>
<td>6,303</td>
<td>6,463</td>
</tr>
<tr>
<td>Rented-dwelling</td>
<td>2,244</td>
<td>1,717</td>
<td>2,696</td>
<td>2,372</td>
<td>1,665</td>
<td>2,084</td>
<td>4,972</td>
<td>2,907</td>
</tr>
<tr>
<td>Other-lodging</td>
<td>612</td>
<td>636</td>
<td>688</td>
<td>833</td>
<td>548</td>
<td>385</td>
<td>600</td>
<td>370</td>
</tr>
<tr>
<td>Utilities, fuels, and public services</td>
<td>3,400</td>
<td>2,914</td>
<td>2,668</td>
<td>2,766</td>
<td>2,070</td>
<td>2,620</td>
<td>5,088</td>
<td>3,329</td>
</tr>
<tr>
<td>Household services</td>
<td>876</td>
<td>746</td>
<td>822</td>
<td>849</td>
<td>472</td>
<td>566</td>
<td>827</td>
<td>740</td>
</tr>
<tr>
<td>Housekeeping and miscellaneous supplies</td>
<td>624</td>
<td>630</td>
<td>694</td>
<td>790</td>
<td>432</td>
<td>610</td>
<td>434</td>
<td>660</td>
</tr>
<tr>
<td>Household furnishings and equipment</td>
<td>5,680</td>
<td>4,142</td>
<td>4,706</td>
<td>5,631</td>
<td>4,080</td>
<td>4,741</td>
<td>5,487</td>
<td>4,667</td>
</tr>
<tr>
<td>Vehicle-purchases (net-outlay)</td>
<td>3,670</td>
<td>3,066</td>
<td>3,002</td>
<td>4,209</td>
<td>3,716</td>
<td>3,947</td>
<td>4,234</td>
<td>4,265</td>
</tr>
<tr>
<td>Gasoline and motor oil</td>
<td>1,026</td>
<td>1,264</td>
<td>1,284</td>
<td>1,400</td>
<td>1,407</td>
<td>1,452</td>
<td>1,261</td>
<td>1,559</td>
</tr>
<tr>
<td>Other-vehicle-expenses (repairs, insurance, lease, license, and other charges)</td>
<td>2,140</td>
<td>2,229</td>
<td>2,142</td>
<td>2,007</td>
<td>2,534</td>
<td>2,466</td>
<td>2,548</td>
<td>2,655</td>
</tr>
<tr>
<td>Public transportation</td>
<td>667</td>
<td>482</td>
<td>412</td>
<td>742</td>
<td>250</td>
<td>302</td>
<td>400</td>
<td>224</td>
</tr>
</tbody>
</table>

4.a. If the debtor resides in Alabama, Arkansas, Delaware, District of Columbia, Florida, Georgia, Kentucky, Louisiana, Maryland, Mississippi, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, Virginia, or West Virginia, except for a metropolitan area listed in clause b of this subparagraph, actual annual expenditures by the debtor's family that exceed the applicable amount for a category, based on the debtor's available resources, shall be presumed unnecessary:

<table>
<thead>
<tr>
<th>Debtor's Available Resources</th>
<th>Less than</th>
<th>$5,000</th>
<th>$5,000 to</th>
<th>$10,000</th>
<th>$10,000 to</th>
<th>$15,000</th>
<th>$15,000 to</th>
<th>$20,000</th>
<th>$20,000 to</th>
<th>$30,000</th>
<th>$30,000 to</th>
<th>$40,000</th>
<th>$40,000 to</th>
<th>$50,000</th>
<th>$50,000 to</th>
<th>$70,000 and over</th>
</tr>
</thead>
<tbody>
<tr>
<td>Owned-dwelling</td>
<td>1,311</td>
<td>1,302</td>
<td>1,294</td>
<td>1,715</td>
<td>2,423</td>
<td>3,128</td>
<td>4,129</td>
<td>5,158</td>
<td>10,293</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Rented-dwelling</td>
<td>1,002</td>
<td>1,029</td>
<td>1,081</td>
<td>2,122</td>
<td>2,510</td>
<td>2,869</td>
<td>1,834</td>
<td>1,702</td>
<td>1,095</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Other-lodging</td>
<td>74</td>
<td>73</td>
<td>74</td>
<td>63</td>
<td>112</td>
<td>170</td>
<td>222</td>
<td>311</td>
<td>563</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Utilities, fuels, and other charges</td>
<td>1,544</td>
<td>1,735</td>
<td>2,174</td>
<td>2,282</td>
<td>2,558</td>
<td>2,735</td>
<td>3,092</td>
<td>3,315</td>
<td>4,194</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Household services</td>
<td>135</td>
<td>131</td>
<td>246</td>
<td>423</td>
<td>408</td>
<td>461</td>
<td>554</td>
<td>754</td>
<td>1,461</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Housekeeping and miscellaneous supplies</td>
<td>310</td>
<td>252</td>
<td>206</td>
<td>379</td>
<td>386</td>
<td>467</td>
<td>486</td>
<td>565</td>
<td>922</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Household furnishings and equipment</td>
<td>547</td>
<td>389</td>
<td>496</td>
<td>653</td>
<td>823</td>
<td>1,011</td>
<td>1,320</td>
<td>1,416</td>
<td>3,125</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Vehicle-purchases (net-outlay)</td>
<td>614</td>
<td>627</td>
<td>1,437</td>
<td>1,618</td>
<td>2,452</td>
<td>3,198</td>
<td>3,390</td>
<td>5,205</td>
<td>6,715</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Gasoline and motor oil</td>
<td>748</td>
<td>613</td>
<td>790</td>
<td>1,022</td>
<td>1,218</td>
<td>1,419</td>
<td>1,591</td>
<td>1,829</td>
<td>2,249</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Vehicle maintenance and repairs</td>
<td>235</td>
<td>217</td>
<td>249</td>
<td>544</td>
<td>423</td>
<td>485</td>
<td>593</td>
<td>574</td>
<td>922</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Vehicle insurance</td>
<td>289</td>
<td>289</td>
<td>481</td>
<td>620</td>
<td>770</td>
<td>948</td>
<td>1,019</td>
<td>1,163</td>
<td>1,476</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Vehicle lease, license, and other charges</td>
<td>113</td>
<td>93</td>
<td>72</td>
<td>108</td>
<td>194</td>
<td>227</td>
<td>246</td>
<td>358</td>
<td>586</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Public transportation</td>
<td>95</td>
<td>53</td>
<td>57</td>
<td>112</td>
<td>125</td>
<td>151</td>
<td>183</td>
<td>250</td>
<td>628</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

| Debtor's Available Resources | Less than | $6,000 | $6,000 to | $9,000 | $9,000 to | $12,000 | $12,000 to | $15,000 | $15,000 to | $20,000 | $20,000 to | $30,000 | $30,000 to | $40,000 | $40,000 to | $50,000 | $50,000 to | $60,000 and over |
| Owned-dwelling | 1,385 | 1,344 | 1,342 | 1,834 | 2,493 | 3,023 | 4,185 | 5,423 | 10,293 |
| Rented-dwelling | 2,008 | 1,723 | 1,846 | 2,079 | 2,309 | 2,387 | 1,880 | 1,848 | 1,682 |
| Other-lodging | 186 | 28 | 24 | 100 | 44 | 261 | 288 | 274 | 406 |
| Utilities, fuels, and other charges | 1,610 | 1,850 | 2,093 | 2,556 | 2,521 | 2,630 | 3,030 | 3,293 | 4,086 |
| Household services | 128 | 202 | 243 | 462 | 477 | 526 | 743 | 806 | 1,423 |
| Housekeeping and miscellaneous supplies | 347 | 272 | 291 | 378 | 360 | 484 | 460 | 676 | 966 |
| Household furnishings and equipment | 567 | 468 | 466 | 613 | 829 | 1,002 | 1,531 | 1,661 | 3,080 |
| Vehicle-purchases (net-outlay) | 673 | 859 | 1,248 | 2,694 | 2,744 | 2,483 | 2,769 | 6,682 | 6,663 |
| Gasoline and motor oil | 682 | 672 | 606 | 806 | 1,102 | 1,349 | 1,805 | 1,680 | 1,958 |
| Vehicle maintenance and repairs | 311 | 240 | 206 | 397 | 623 | 700 | 787 | 1,167 | 1,672 |
| Vehicle insurance | 340 | 319 | 481 | 592 | 258 | 814 | 1,017 | 1,176 | 1,432 |
| Vehicle lease, license, and other charges | 121 | 92 | 106 | 418 | 479 | 218 | 337 | 404 | 700 |
| Public transportation | 126 | 90 | 97 | 126 | 121 | 162 | 266 | 368 | 644 |
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b. If the debtor resides in one (1) of the following metropolitan areas, actual annual expenditures by the debtor's family that exceed the applicable amount for a category shall be presumed unnecessary:

<table>
<thead>
<tr>
<th>Washington, D.C.</th>
<th>Baltimore</th>
<th>Atlanta</th>
<th>Miami</th>
<th>Tampa</th>
<th>Dallas</th>
<th>Houston</th>
</tr>
</thead>
<tbody>
<tr>
<td>Owned dwelling</td>
<td>8,641</td>
<td>6,102</td>
<td>6,363</td>
<td>5,685</td>
<td>5,561</td>
<td>6,065</td>
</tr>
<tr>
<td>Rented dwelling</td>
<td>2,958</td>
<td>2,036</td>
<td>2,024</td>
<td>3,155</td>
<td>1,889</td>
<td>2,528</td>
</tr>
<tr>
<td>Other lodging</td>
<td>589</td>
<td>510</td>
<td>376</td>
<td>321</td>
<td>350</td>
<td>616</td>
</tr>
<tr>
<td>Utilities, fuels, and public services</td>
<td>3,067</td>
<td>2,767</td>
<td>3,421</td>
<td>3,068</td>
<td>3,021</td>
<td>3,538</td>
</tr>
<tr>
<td>Household services</td>
<td>932</td>
<td>588</td>
<td>669</td>
<td>991</td>
<td>848</td>
<td>794</td>
</tr>
<tr>
<td>Housekeeping and miscellaneous supplies</td>
<td>648</td>
<td>588</td>
<td>401</td>
<td>524</td>
<td>398</td>
<td>569</td>
</tr>
<tr>
<td>Household furnishings and equipment</td>
<td>2,028</td>
<td>1,169</td>
<td>1,243</td>
<td>1,434</td>
<td>1,288</td>
<td>1,672</td>
</tr>
<tr>
<td>Vehicle purchases (net outlay)</td>
<td>3,374</td>
<td>1,652</td>
<td>3,610</td>
<td>3,709</td>
<td>3,546</td>
<td>4,939</td>
</tr>
<tr>
<td>Gasoline and motor oil</td>
<td>1,318</td>
<td>1,139</td>
<td>1,222</td>
<td>1,354</td>
<td>1,142</td>
<td>1,510</td>
</tr>
<tr>
<td>Other vehicle expenses (repairs, insurance, lease, license, and other charges)</td>
<td>2,454</td>
<td>2,215</td>
<td>2,269</td>
<td>2,668</td>
<td>2,407</td>
<td>3,018</td>
</tr>
<tr>
<td>Public transportation</td>
<td>707</td>
<td>400</td>
<td>280</td>
<td>447</td>
<td>196</td>
<td>348</td>
</tr>
</tbody>
</table>

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

<table>
<thead>
<tr>
<th>Debtor's Available Resources</th>
<th>Less than $5,000</th>
<th>$5,000 to $9,999</th>
<th>$10,000 to $14,999</th>
<th>$15,000 to $19,999</th>
<th>$20,000 to $29,999</th>
<th>$30,000 to $39,999</th>
<th>$40,000 to $49,999</th>
<th>$50,000 to $59,999</th>
<th>$70,000 and over</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Annual Expenditures</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Owned dwelling</td>
<td>2,073</td>
<td>1,605</td>
<td>1,920</td>
<td>2,066</td>
<td>3,011</td>
<td>3,963</td>
<td>4,724</td>
<td>7,016</td>
<td>13,286</td>
</tr>
<tr>
<td>Rented dwelling</td>
<td>2,809</td>
<td>2,704</td>
<td>3,292</td>
<td>3,735</td>
<td>3,747</td>
<td>3,671</td>
<td>3,650</td>
<td>3,723</td>
<td>13,487</td>
</tr>
<tr>
<td>Other lodgings</td>
<td>456</td>
<td>288</td>
<td>239</td>
<td>209</td>
<td>221</td>
<td>253</td>
<td>307</td>
<td>476</td>
<td>1,168</td>
</tr>
<tr>
<td>Utilities, fuels, and public services</td>
<td>1,411</td>
<td>1,264</td>
<td>1,585</td>
<td>1,773</td>
<td>2,065</td>
<td>2,377</td>
<td>2,669</td>
<td>2,968</td>
<td>3,776</td>
</tr>
<tr>
<td>Household services</td>
<td>262</td>
<td>161</td>
<td>376</td>
<td>300</td>
<td>435</td>
<td>521</td>
<td>513</td>
<td>762</td>
<td>1,828</td>
</tr>
<tr>
<td>Housekeeping and miscellaneous supplies</td>
<td>308</td>
<td>208</td>
<td>392</td>
<td>460</td>
<td>409</td>
<td>535</td>
<td>515</td>
<td>669</td>
<td>931</td>
</tr>
<tr>
<td>Household furnishings and equipment</td>
<td>617</td>
<td>452</td>
<td>880</td>
<td>942</td>
<td>1,059</td>
<td>1,392</td>
<td>1,613</td>
<td>1,915</td>
<td>3,474</td>
</tr>
<tr>
<td>Vehicle purchases (net outlay)</td>
<td>1,477</td>
<td>1,220</td>
<td>1,418</td>
<td>1,461</td>
<td>2,663</td>
<td>3,215</td>
<td>3,413</td>
<td>5,214</td>
<td>7,009</td>
</tr>
<tr>
<td>Gasoline and motor oil</td>
<td>730</td>
<td>615</td>
<td>812</td>
<td>1,000</td>
<td>1,200</td>
<td>1,457</td>
<td>1,712</td>
<td>1,978</td>
<td>2,438</td>
</tr>
<tr>
<td>Vehicle maintenance and repairs</td>
<td>352</td>
<td>287</td>
<td>312</td>
<td>532</td>
<td>737</td>
<td>810</td>
<td>954</td>
<td>1,353</td>
<td></td>
</tr>
<tr>
<td>Vehicle insurance</td>
<td>334</td>
<td>319</td>
<td>412</td>
<td>581</td>
<td>725</td>
<td>944</td>
<td>1,051</td>
<td>1,191</td>
<td>1,507</td>
</tr>
<tr>
<td>Vehicle lease, license, and other charges</td>
<td>262</td>
<td>89</td>
<td>178</td>
<td>171</td>
<td>273</td>
<td>316</td>
<td>412</td>
<td>552</td>
<td>1,007</td>
</tr>
<tr>
<td>Public transportation</td>
<td>190</td>
<td>128</td>
<td>183</td>
<td>263</td>
<td>353</td>
<td>394</td>
<td>383</td>
<td>588</td>
<td>1,110</td>
</tr>
</tbody>
</table>

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

**-169-**
6. If the debtor is the only member of the household, actual annual expenditures by the debtor's family that exceed the applicable amount for a category, based on the debtor's available resources, shall be presumed unnecessary:

<table>
<thead>
<tr>
<th>Debtor's Available Resources</th>
<th>Less than $5,000</th>
<th>$5,000 to $9,999</th>
<th>$10,000 to $14,999</th>
<th>$15,000 to $19,999</th>
<th>$20,000 to $29,999</th>
<th>$30,000 to $39,999</th>
<th>$40,000 to $49,999</th>
<th>$50,000 to $69,999</th>
<th>$70,000 and over</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Food</strong></td>
<td>2,143</td>
<td>1,863</td>
<td>2,356</td>
<td>2,683</td>
<td>2,975</td>
<td>3,845</td>
<td>3,868</td>
<td>3,855</td>
<td>4,533</td>
</tr>
<tr>
<td><strong>Apparel</strong></td>
<td>848</td>
<td>542</td>
<td>507</td>
<td>515</td>
<td>578</td>
<td>642</td>
<td>706</td>
<td>716</td>
<td>820</td>
</tr>
<tr>
<td><strong>Health insurance</strong></td>
<td>112</td>
<td>107</td>
<td>1,053</td>
<td>980</td>
<td>878</td>
<td>820</td>
<td>800</td>
<td>854</td>
<td>1,020</td>
</tr>
<tr>
<td><strong>Medical services</strong></td>
<td>213</td>
<td>163</td>
<td>336</td>
<td>337</td>
<td>417</td>
<td>426</td>
<td>348</td>
<td>427</td>
<td>1,145</td>
</tr>
<tr>
<td><strong>Prescription drugs</strong></td>
<td>162</td>
<td>323</td>
<td>538</td>
<td>469</td>
<td>431</td>
<td>332</td>
<td>319</td>
<td>421</td>
<td></td>
</tr>
<tr>
<td><strong>Medical supplies</strong></td>
<td>35</td>
<td>54</td>
<td>80</td>
<td>73</td>
<td>60</td>
<td>102</td>
<td>78</td>
<td>83</td>
<td>83</td>
</tr>
<tr>
<td><strong>Personal care products and services</strong></td>
<td>205</td>
<td>189</td>
<td>278</td>
<td>314</td>
<td>367</td>
<td>377</td>
<td>463</td>
<td>525</td>
<td>661</td>
</tr>
<tr>
<td><strong>Education</strong></td>
<td>1,343</td>
<td>713</td>
<td>491</td>
<td>470</td>
<td>267</td>
<td>292</td>
<td>341</td>
<td>454</td>
<td>1,164</td>
</tr>
<tr>
<td><strong>Life and other personal insurance</strong></td>
<td>47</td>
<td>98</td>
<td>115</td>
<td>153</td>
<td>136</td>
<td>173</td>
<td>219</td>
<td>264</td>
<td>455</td>
</tr>
</tbody>
</table>

**Note:** The table above shows the comparative expenditures for different categories based on the debtor's available resources. The values represent the range of annual expenditures for each category, with the highest range indicated in bold. The costs are categorized by type of expenditure, such as food, apparel, health insurance, medical services, prescription drugs, medical supplies, personal care products and services, education, and life and other personal insurance.
7. If the debtor's household consists of two (2) persons, actual annual expenditures by the debtor's family that exceed the applicable amount for a category, based on the debtor's available resources, shall be presumed unnecessary:

<table>
<thead>
<tr>
<th>Debtor's Available Resources</th>
<th>Less than $5,000</th>
<th>$5,000 to $9,999</th>
<th>$10,000 to $14,999</th>
<th>$15,000 to $19,999</th>
<th>$20,000 to $29,999</th>
<th>$30,000 to $49,999</th>
<th>$50,000 to $69,999</th>
<th>$70,000 and over</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Annual Expenditures</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Food</td>
<td>4,192</td>
<td>3,101</td>
<td>3,539</td>
<td>3,728</td>
<td>4,273</td>
<td>4,842</td>
<td>5,345</td>
<td>5,959</td>
</tr>
<tr>
<td>Apparel</td>
<td>1,038</td>
<td>861</td>
<td>1,061</td>
<td>846</td>
<td>852</td>
<td>1,144</td>
<td>1,466</td>
<td>1,495</td>
</tr>
<tr>
<td>Health insurance</td>
<td>814</td>
<td>887</td>
<td>1,137</td>
<td>1,619</td>
<td>1,745</td>
<td>1,702</td>
<td>1,802</td>
<td>1,625</td>
</tr>
<tr>
<td>Medical services</td>
<td>297</td>
<td>272</td>
<td>405</td>
<td>401</td>
<td>582</td>
<td>722</td>
<td>690</td>
<td>761</td>
</tr>
<tr>
<td>Prescription drugs</td>
<td>490</td>
<td>391</td>
<td>426</td>
<td>757</td>
<td>757</td>
<td>782</td>
<td>702</td>
<td>645</td>
</tr>
<tr>
<td>Medical supplies</td>
<td>79</td>
<td>67</td>
<td>80</td>
<td>117</td>
<td>139</td>
<td>148</td>
<td>124</td>
<td>172</td>
</tr>
<tr>
<td>Personal care products and services</td>
<td>357</td>
<td>247</td>
<td>306</td>
<td>382</td>
<td>428</td>
<td>466</td>
<td>571</td>
<td>651</td>
</tr>
<tr>
<td>Education</td>
<td>383</td>
<td>366</td>
<td>461</td>
<td>217</td>
<td>282</td>
<td>280</td>
<td>413</td>
<td>612</td>
</tr>
<tr>
<td>Life and other personal insurance</td>
<td>176</td>
<td>177</td>
<td>214</td>
<td>264</td>
<td>290</td>
<td>367</td>
<td>420</td>
<td>523</td>
</tr>
</tbody>
</table>

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

<table>
<thead>
<tr>
<th>Debtor's Available Resources</th>
<th>Less than $5,000</th>
<th>$5,000 to $9,999</th>
<th>$10,000 to $14,999</th>
<th>$15,000 to $19,999</th>
<th>$20,000 to $29,999</th>
<th>$30,000 to $49,999</th>
<th>$50,000 to $69,999</th>
<th>$70,000 and over</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Annual Expenditures</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Food</td>
<td>3,836</td>
<td>2,247</td>
<td>3,668</td>
<td>3,700</td>
<td>4,625</td>
<td>4,631</td>
<td>5,244</td>
<td>6,153</td>
</tr>
<tr>
<td>Apparel</td>
<td>884</td>
<td>728</td>
<td>1,036</td>
<td>912</td>
<td>1,007</td>
<td>1,249</td>
<td>1,362</td>
<td>1,720</td>
</tr>
<tr>
<td>Health insurance</td>
<td>842</td>
<td>630</td>
<td>1,248</td>
<td>1,608</td>
<td>1,794</td>
<td>1,672</td>
<td>1,679</td>
<td>1,547</td>
</tr>
<tr>
<td>Medical services</td>
<td>470</td>
<td>483</td>
<td>436</td>
<td>458</td>
<td>660</td>
<td>736</td>
<td>807</td>
<td>733</td>
</tr>
<tr>
<td>Prescription drugs</td>
<td>610</td>
<td>437</td>
<td>561</td>
<td>824</td>
<td>619</td>
<td>757</td>
<td>733</td>
<td>665</td>
</tr>
<tr>
<td>Medical supplies</td>
<td>68</td>
<td>64</td>
<td>79</td>
<td>402</td>
<td>483</td>
<td>307</td>
<td>1,417</td>
<td>1,414</td>
</tr>
<tr>
<td>Personal care products and services</td>
<td>234</td>
<td>306</td>
<td>242</td>
<td>379</td>
<td>453</td>
<td>482</td>
<td>642</td>
<td>666</td>
</tr>
<tr>
<td>Education</td>
<td>667</td>
<td>226</td>
<td>318</td>
<td>204</td>
<td>276</td>
<td>306</td>
<td>416</td>
<td>451</td>
</tr>
<tr>
<td>Life and other personal insurance</td>
<td>208</td>
<td>463</td>
<td>243</td>
<td>374</td>
<td>314</td>
<td>398</td>
<td>444</td>
<td>464</td>
</tr>
</tbody>
</table>

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

<table>
<thead>
<tr>
<th>Debtor's Available Resources</th>
<th>Less than $10,000</th>
<th>to $14,999</th>
<th>to $19,999</th>
<th>to $29,999</th>
<th>to $39,999</th>
<th>to $49,999</th>
<th>to $59,999</th>
<th>to $69,999</th>
<th>and over</th>
</tr>
</thead>
<tbody>
<tr>
<td>Food</td>
<td>5,029</td>
<td>5,379</td>
<td>5,806</td>
<td>5,746</td>
<td>6,472</td>
<td>6,654</td>
<td>7,059</td>
<td>7,063</td>
<td>10,063</td>
</tr>
<tr>
<td>Apparel</td>
<td>1,345</td>
<td>1,651</td>
<td>1,725</td>
<td>1,729</td>
<td>1,829</td>
<td>1,857</td>
<td>2,049</td>
<td>2,057</td>
<td>3,057</td>
</tr>
<tr>
<td>Health insurance</td>
<td>515</td>
<td>426</td>
<td>537</td>
<td>774</td>
<td>1,062</td>
<td>1,371</td>
<td>1,734</td>
<td>1,778</td>
<td>2,557</td>
</tr>
<tr>
<td>Medical services</td>
<td>234</td>
<td>148</td>
<td>236</td>
<td>271</td>
<td>458</td>
<td>533</td>
<td>785</td>
<td>921</td>
<td></td>
</tr>
<tr>
<td>Prescription drugs</td>
<td>101</td>
<td>173</td>
<td>273</td>
<td>338</td>
<td>302</td>
<td>376</td>
<td>384</td>
<td>495</td>
<td></td>
</tr>
<tr>
<td>Medical supplies</td>
<td>29</td>
<td>17</td>
<td>45</td>
<td>62</td>
<td>70</td>
<td>108</td>
<td>145</td>
<td>169</td>
<td></td>
</tr>
<tr>
<td>Personal care products and services</td>
<td>521</td>
<td>417</td>
<td>369</td>
<td>443</td>
<td>476</td>
<td>522</td>
<td>641</td>
<td>1,032</td>
<td></td>
</tr>
<tr>
<td>Education</td>
<td>359</td>
<td>218</td>
<td>402</td>
<td>305</td>
<td>302</td>
<td>414</td>
<td>807</td>
<td>2,701</td>
<td></td>
</tr>
<tr>
<td>Life and other personal insurance</td>
<td>206</td>
<td>177</td>
<td>130</td>
<td>200</td>
<td>235</td>
<td>321</td>
<td>415</td>
<td>784</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
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<th>Debtor’s Available Resources</th>
<th>Less than $10,000</th>
<th>to $14,999</th>
<th>to $19,999</th>
<th>to $29,999</th>
<th>to $39,999</th>
<th>to $49,999</th>
<th>to $59,999</th>
<th>to $69,999</th>
<th>and over</th>
</tr>
</thead>
<tbody>
<tr>
<td>Food</td>
<td>6,337</td>
<td>6,829</td>
<td>6,816</td>
<td>6,680</td>
<td>6,874</td>
<td>6,863</td>
<td>8,242</td>
<td>9,769</td>
<td></td>
</tr>
<tr>
<td>Apparel</td>
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<td>2,074</td>
<td>2,470</td>
<td>2,690</td>
<td>2,689</td>
<td>2,428</td>
<td>2,441</td>
<td>1,643</td>
<td></td>
</tr>
<tr>
<td>Health insurance</td>
<td>530</td>
<td>289</td>
<td>486</td>
<td>715</td>
<td>4,298</td>
<td>4,241</td>
<td>1,069</td>
<td>1,668</td>
<td></td>
</tr>
<tr>
<td>Medical services</td>
<td>266</td>
<td>406</td>
<td>190</td>
<td>360</td>
<td>627</td>
<td>776</td>
<td>849</td>
<td>960</td>
<td></td>
</tr>
<tr>
<td>Prescription drugs</td>
<td>162</td>
<td>146</td>
<td>161</td>
<td>257</td>
<td>244</td>
<td>419</td>
<td>445</td>
<td>631</td>
<td></td>
</tr>
<tr>
<td>Medical supplies</td>
<td>38</td>
<td>18</td>
<td>64</td>
<td>87</td>
<td>74</td>
<td>118</td>
<td>436</td>
<td>465</td>
<td></td>
</tr>
<tr>
<td>Personal care products and services</td>
<td>526</td>
<td>476</td>
<td>336</td>
<td>425</td>
<td>697</td>
<td>664</td>
<td>396</td>
<td>1,007</td>
<td></td>
</tr>
<tr>
<td>Education</td>
<td>469</td>
<td>640</td>
<td>362</td>
<td>269</td>
<td>374</td>
<td>687</td>
<td>686</td>
<td>2,485</td>
<td></td>
</tr>
<tr>
<td>Life and other personal insurance</td>
<td>266</td>
<td>190</td>
<td>146</td>
<td>252</td>
<td>258</td>
<td>249</td>
<td>443</td>
<td>861</td>
<td></td>
</tr>
</tbody>
</table>

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

<table>
<thead>
<tr>
<th>Debtor’s Available Resources</th>
<th>Less than $10,000</th>
<th>to $14,999</th>
<th>to $19,999</th>
<th>to $29,999</th>
<th>to $39,999</th>
<th>to $49,999</th>
<th>to $59,999</th>
<th>to $69,999</th>
<th>and over</th>
</tr>
</thead>
<tbody>
<tr>
<td>Food</td>
<td>6,450</td>
<td>6,701</td>
<td>5,889</td>
<td>5,526</td>
<td>6,207</td>
<td>7,541</td>
<td>8,715</td>
<td>10,731</td>
<td></td>
</tr>
<tr>
<td>Apparel</td>
<td>2,532</td>
<td>1,801</td>
<td>1,572</td>
<td>1,852</td>
<td>2,103</td>
<td>2,152</td>
<td>2,512</td>
<td>3,805</td>
<td></td>
</tr>
<tr>
<td>Health insurance</td>
<td>306</td>
<td>314</td>
<td>392</td>
<td>618</td>
<td>898</td>
<td>1,213</td>
<td>1,405</td>
<td>1,859</td>
<td></td>
</tr>
<tr>
<td>Medical services</td>
<td>153</td>
<td>184</td>
<td>441</td>
<td>468</td>
<td>675</td>
<td>729</td>
<td>1,113</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Prescription drugs</td>
<td>218</td>
<td>181</td>
<td>200</td>
<td>191</td>
<td>233</td>
<td>322</td>
<td>361</td>
<td>523</td>
<td></td>
</tr>
<tr>
<td>Medical supplies</td>
<td>12</td>
<td>15</td>
<td>30</td>
<td>55</td>
<td>56</td>
<td>80</td>
<td>116</td>
<td>167</td>
<td></td>
</tr>
<tr>
<td>Personal care products and services</td>
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<td>403</td>
<td>392</td>
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<td>632</td>
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<td>Education</td>
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<td>253</td>
<td>160</td>
<td>311</td>
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<td>733</td>
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<td>Life and other personal insurance</td>
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<td>92</td>
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<td>82</td>
<td>272</td>
<td>280</td>
<td>385</td>
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</table>

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

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

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

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

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

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

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

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

or

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

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

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

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

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

JIM JACKSON, Chair
APPROVED BY AGENCY: May 25, 2006
FILED WITH LRC: June 15, 2006 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Friday, July 21, 2006 at 10 a.m. at 100 Airport Road, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing 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 Monday, July 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: Mr. Richard F. Casey, General Counsel, Kentucky Higher Education Assistance Authority, P.O. Box 738, Frankfort, Kentucky 40602-0738, phone (502) 696-7292, fax (502) 696-7290.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Richard F. Casey
(1) Provide a brief summary of:
(a) What administrative regulation does: This administrative regulation sets out the procedures to be followed by the Authority in garnishing a defaulted student loan borrower’s wages for payment of the borrower’s student loan debt as well as the procedures for a borrower to request a hearing on a garnishment and procedures for conducting that hearing.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with the requirements of the Higher Education Act of 1965, as amended, and its accompanying regulations regarding the collection of defaulted student loan debts.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The authorizing statutes permit the Authority to collect defaulted student loan debts through administrative wage garnishment, and to conduct administrative hearings relating to the wage garnishment.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by setting forth the procedures to be followed during the administrative wage garnishment process as well as the hearing process.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: The amendment to this administrative regulation will reflect the current poverty level and consumer expenditure figures published by the federal government.

(b) The necessity of the amendment to this administrative regulation: Current poverty level and consumer expenditure figures are necessary to assure a current and accurate standard for determining the validity of a claim of extreme financial hardship.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment to this administrative regulation conforms with the requirements of federal and state law that the Authority promulgate regulations establishing the procedures for the conduct of hearings regarding administrative wage garnishment by the Authority.

(d) How the amendment will assist in the effective administration of the statutes: The amendment to this administrative regulation will assist in the effective administration of the statutes by establishing an objective standard for extreme financial hardship that will be based on current economic data as established by the federal government.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Student loan borrowers that have defaulted on their repayment obligations, whose wages are otherwise eligible for administrative wage garnishment, and who are claiming that such garnishment will cause them extreme financial hardship. During FY 2005-2006 approximately 632 notices of wage garnishment were sent and received by student loan borrowers. During the same period, 5 of those student loan borrowers requested a hearing regarding the wage garnishment. Of the 5 hearing requests, 4 of the hearings were requested on the grounds of extreme financial hardship.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: Upon notice of the Authority’s intent to issue an administrative wage garnishment, a student loan borrower contesting the garnishment and asserting a claim of extreme financial hardship will submit financial data to be evaluated in comparison to the data contained in the administrative regulation. Expenditures reported by the borrower which exceed the amounts specified in the administrative regulation will be presumed to be unnecessary. Thus, the most recent figures relating to consumer expenditures must be utilized in the administrative regulation.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: There are no costs to student loan borrowers associated with the implementation of the amendment to this administrative regulation. Forms for requesting a hearing and for providing extreme financial hardship are provided to the borrowers at no cost to the borrower. The Authority bears any costs associated with the request for hearing.

(b) On a continuing basis: Same as (5)(a) above.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The authority maintains a federally restricted trust fund pursuant to 20 U.S.C. Section 1072b for operation of the insured student loan program.

(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 is necessary for the implementation of the amendment to this administrative regulation. The amendment to this administrative regulation merely adopts the most recent economic standards, as determined by the federal government, for evaluating a student loan borrower’s assertion that administrative wage garnishment will create an extreme financial hardship.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: The
administrative regulation neither establishes any fees nor directly or indirectly increases any fees.

(9) TIERING: Is tiering applied? Tiering was not applied. It is not applicable to this amendment? This administrative regulation is intended to provide equal opportunity to participate, and consequently does not inherently result in disproportionate impacts on certain classes of regulated entities. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Section 2 and 3 of the Kentucky Constitution.

FEDERAL MANDATE ANALYSIS COMPARISON

(1). Cite the federal statute or regulation constituting the federal mandate. 34 C.F.R. 662.410 (b) (10)
(2). State in sufficient detail the state compliance standards. This regulation provides for the garnishment of the disposable pay of a borrower who has defaulted in making payments on a loan guaranteed pursuant to Title IV, Part B, of the federal act and procedures for requesting and conducting a hearing related to the garnishment of the disposable pay.

At least 30 days before the initiation of garnishment proceedings, the authority shall mail to the borrower's last known address, a written notice of the nature and amount of the debt, the intention of the authority to initiate proceedings to collect the debt through deductions from the borrower's pay, and an explanation of the borrower's rights. In the absence of evidence to the contrary, a borrower shall be considered to have received the notice after it was mailed by the authority. The authority shall offer the borrower an opportunity to inspect and copy authority records related to the debt and an opportunity to enter into a written repayment agreement with the authority under terms agreeable to the authority.

The authority shall offer the borrower an opportunity for a hearing concerning the existence or the amount of the debt and the terms of the repayment schedule under the garnishment order. The authority shall provide a hearing, which, at the borrower's option, may be oral or written, if the borrower submits a written request for such a hearing. The time and location of the hearing shall be established by the authority. An oral hearing may, at the borrower's option, be conducted either in person or by telephone conference. The authority shall provide a hearing to the borrower in sufficient time to permit a decision, in accordance with the procedures prescribed in the administrative regulation, to be rendered within 60 days after the authority's receipt of the borrower's hearing request. The hearing official appointed by the authority to conduct the hearing may not be under the supervision or control of the head of the authority. The hearing official shall issue a final written decision.

If the borrower's written request is received by the authority on or before the 15th day following the borrower's receipt of the notice of the nature and amount of the debt, the intention of the authority to initiate proceedings, and an explanation of the borrower's rights, the authority may not issue a withholding order until the borrower has been provided the requested hearing. If the borrower's written request is received by the authority after the 15th day following the borrower's receipt of the notice, the authority shall provide a hearing to the borrower in sufficient time to permit a decision, in accordance with the procedures prescribed in the administrative regulation, if rendered within 60 days, but shall not delay issuance of a withholding order.

This administrative regulation further provides that if the debtor does not submit required documentation in a timely fashion, then he has not met his burden of substantiating his case. Additionally, if a defense has previously been raised and refuted by the authority, then the hearing officer must give deference to a prior decision of the authority. Also, if the debtor is raising for the first time in the administrative wage garnishment hearing a defense that should have been raised at the point of default or some prior prior action, then the debtor shall be deemed to have not exhausted his appropriate remedies, and the hearing officer may stay the hearing pending consideration of the dispute through the appropriate remedy. Finally, the administrative regulation provides the hearing officer with guidelines to follow which allow him to consistently construe and apply the concept of "extreme financial hardship." In order to prove "extreme financial hardship," a debtor must show, if his income is above the poverty level, that his expenses are necessary to the health, safety, or continued employment of the debtor. If the expenses of the debtor exceed the standards derived from data published by the Bureau of Labor Statistics, then the excess expenses are presumed unnecessary and are not considered in the determination unless the debtor can demonstrate that the expenses are necessitated as the result of extraordinary circumstances beyond his control, such as the cost of unreimbursed medical care.

The final decision of the hearing officer may be appealed to and reviewed by the authority board on request of either party. An appeal from the hearing officer's decision shall follow the standard that the Board shall uphold the hearing officer's decision unless it is clearly unsupported by the evidence.

The authority may not garnish the wages of a borrower whom it knows has been involuntarily separated from employment until the borrower has been reemployed continuously for at least 12 months.

Unless the authority receives information that the authority believes justifies a delay or cancellation of the withholding order, it shall send a withholding order to the employer within 20 days after the borrower fails to make a timely request for a hearing, or, if a timely request for a hearing is made by the borrower, within 20 days after a final decision is made by the authority to proceed with garnishment.

The employer shall deduct and pay to the authority from a borrower's wages an amount that does not exceed the lesser of 10% of the borrower's disposable pay for each pay period or the amount permitted by 15 U.S.C. 1673, unless the borrower provides the authority with written consent to deduct a greater amount.

3. State in sufficient detail the minimum or uniform standards contained in the federal mandate. The federal statute and regulations require the authority, as the designated state guarantee authority, to ensure by adoption of standards, policies and procedures that a borrower has an opportunity for a hearing to dispute the existence, amount or repayment of the debt and that the regulations and procedures for such a hearing meet the requirements of the applicable federal statute (20 U.S.C. 1095a) and the applicable federal regulation (34 C.F.R. 662.410(b)(10)).

Specifically, the statute and regulation require that in order to issue an administrative order of wage garnishment under the authority of the federal statute:

At least 30 days before the initiation of garnishment proceedings, the authority shall mail to the borrower's last known address, a written notice of the nature and amount of the debt, the intention of the authority to initiate proceedings to collect the debt through deductions from the borrower's pay, and an explanation of the borrower's rights. In the absence of evidence to the contrary, a borrower shall be considered to have received the notice after it was mailed by the authority. The authority shall offer the borrower an opportunity to inspect and copy authority records related to the debt and an opportunity to enter into a written repayment agreement with the authority under terms agreeable to the authority.

The authority shall offer the borrower an opportunity for a hearing concerning the existence or the amount of the debt and the terms of the repayment schedule under the garnishment order. The authority shall provide a hearing, which, at the borrower's option, may be oral or written, if the borrower submits a written request for such a hearing. The time and location of the hearing shall be established by the authority. An oral hearing may, at the borrower's option, be conducted either in person or by telephone conference. The authority shall provide a hearing to the borrower in sufficient time to permit a decision, in accordance with the procedures prescribed in the administrative regulation, to be rendered within 60 days after the authority's receipt of the borrower's hearing request. The hearing official appointed by the authority to conduct the hearing may not be under the supervision or control of the head of the authority. The hearing official shall issue a final written decision.

The authority shall offer the borrower an opportunity for a hearing concerning the existence or the amount of the debt and the terms of the repayment schedule under the garnishment order. The authority shall provide a hearing, which, at the borrower's option, may be oral or written, if the borrower submits a written request for such a hearing. The time and location of the hearing shall be established by the authority. An oral hearing may, at the borrower's option, be conducted either in person or by telephone conference. The authority shall provide a hearing to the borrower in sufficient time to permit a decision, in accordance with the procedures that the authority may prescribe, to be rendered within 60 days after the authority's receipt of the borrower's hearing request. The hearing official appointed by the authority to conduct the hearing may not be under the supervision or control of the head of the authority. The hearing official shall issue a final written decision.

If the borrower's written request is received by the authority on or before the 15th day following the borrower's receipt of the notice of the nature and amount of the debt, the intention of the authority to initiate proceedings, and an explanation of the borrower's rights,
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the authority may not issue a withholding order until the borrower has been provided the requested hearing. If the borrower's written request is received by the authority after the 15th day following the borrower's receipt of the notice, the authority shall provide a hearing to the borrower in sufficient time that a decision, in accordance with the procedures that the authority may prescribe, may be rendered within 60 days, but shall not delay issuance of a withholding order.

The authority may not garnish the wages of a borrower whom it knows has been involuntarily separated from employment until the borrower has been re-employed continuously for at least 12 months.

Unless the authority receives information that the authority believes justifies a delay or cancellation of the withholding order, it shall send a withholding order to the employer within 20 days after the borrower fails to make a timely request for a hearing, or, if a timely request for a hearing is made by the borrower, within 20 days after a final decision is made by the authority to proceed with garnishment.

The employer shall deduct and pay to the authority from a borrower's wages an amount that does not exceed the lesser of 10 percent of the borrower's disposable pay for each pay period or the amount permitted by 15 U.S.C. 1673, unless the authority provides the authority with written consent to deduct a greater amount.

4. In detail, state whether this administrative regulation will impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate. If the administrative regulation is not identical with the federal mandate, state the reasons for the specific selection. Discuss each state requirement that is stricter than the federal mandate in a separate paragraph.

The administrative regulation does not impose stricter requirements than the federal mandate. The federal statute and regulation do not specify specific hearing procedures with the exception that the hearing must be conducted by an independent hearing officer and not an employee of the authority, the hearing must be conducted and a decision rendered within 60 days after the receipt of the request for a hearing, and that the hearing officer's decision is final (in contrast to KRS Chapter 13B that specifies that the hearing officer renders a "recommended" order subject to finalization by the board). The administrative regulation complies with these requirements. The remaining policies and procedures for requesting and conducting a hearing are left to the discretion of the guaranty agency under the language that the hearing must be conducted "in accordance with the procedures that the agency may prescribe."

The authority provides the debtor with the opportunity for a hearing to dispute the existence, amount or repayment of the debt. The administrative regulation sets out the procedures for requesting and conducting a hearing, that the hearing officer must follow time limits for requesting a hearing and the procedures for conducting a hearing, and the procedures for appealing the decision of the hearing officer to the board.

This administrative regulation further provides that if the debtor does not submit required documentation in a timely fashion, then he has not met his burden of substantiating his case. Additionally, if a defense has previously been raised and rejected by the authority, then the hearing officer must give deference to a prior decision of the authority. Also, if the debtor is raising for the first time in the administrative wage garnishment hearing a defense that should have been raised at the point of default or some prior action, then the debtor shall be deemed to have not exhausted his appropriate remedies, and the hearing officer may stay the hearing pending consideration of the dispute through the appropriate remedy. Finally, the administrative regulation provides the hearing officer with guidelines to follow which allow him to consistently construe and apply the concept of "extreme financial hardship." In order to prove "extreme financial hardship," a debtor must show, if his income is above the poverty level, that his expenses are necessary to the health, safety, or continued employment of the debtor. If the expenses of the debtor exceed his income, and are presumed unnecessary and are not considered in the determination unless the debtor can demonstrate that the expenses are necessitated as the result of extraordinary circumstances beyond his control, such as the cost of unreimbursed medical care.

The final decision of the hearing officer may be appealed to and reviewed by the authority on request of either party. An appeal from the hearing officer's decision shall follow the standard that the Board shall uphold the hearing officer's decision unless it is clearly unsupported by the evidence.

5. For each state requirement that is stricter than the federal mandate, state the justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. There are no requirements in this administrative regulation that are stricter than the federal mandate.

KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY
Division of Student and Administrative Services
(Amendment)

11 KAR 5:130. Student application.

RELATES TO: KRS 164.744(2), 164.753(4), 164.7535, 164.780, 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 regulations pertaining to the awarding of grants, scholarships, and honorary scholarships as provided in KRS 164.740 to 164.788.1. 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 [2006-2007] Free Application for Federal Student Aid (FAFSA) set forth in 11 KAR 4:080, Section 1(b) shall be completed and submitted in accordance with the instructions provided on the FAFSA.

(2) An applicant shall indicate the choices of educational institutions 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 eligible for a KHEAA grant for an academic year in which the person:

(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 program 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 Free Application for Federal Student Aid (FAFSA) and its instructions are incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Higher Education Assistance Authority, 400 Airport Road, Frankfort, Kentucky 40604, Monday through Friday, 8 a.m. to 4:30 p.m.]

JIM JACKSON, Chair
APPROVED BY AGENCY: May 25, 2006
FILED WITH LRC: June 15, 2006 at 11 a.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Friday, July 21, 2006 at 10 a.m. at 100 Airport Road, Frankfort,
Kentucky 40691. Individuals interested in being heard at this hearing shall notify this agency in writing five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. 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. 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 Monday, July 31, 2006. Sand written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Mr. Richard F. Casey, General Counsel, Kentucky Higher Education Assistance Authority, P.O. Box 798, Frankfort, Kentucky 40602-0798, phone (502) 696-7290, fax (502) 696-7293.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Richard F. Casey

(1) Provide a brief summary of:

(e) What this administrative regulation does: This administrative regulation prescribes the form to be used by a student to apply for and establish financial need for KHEAA grant programs.

(b) The necessity of this administrative regulation: KRS 164.7484(4) requires the KHEAA to prescribe the formto be used by a student to apply for and establish financial need for KHEAA grant programs. The amendment conforms to the content of the authorizing statute by prescribing a method of gathering, at no cost to the student or educational institution, information necessary to determine the student's financial need for the grants using the same form and process used by students and educational institutions to determine financial need for federal student aid funds, thereby leading to a more efficient allocation of grant funds.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation prescribes the form to be used by a student to apply for and establish financial need for KHEAA grant programs using a method of gathering, at no cost to the student or educational institution, information necessary to determine the student's financial need for the grants. The required form is the same form used by educational institutions to determine financial need for federal student aid funds, thereby leading to a more efficient allocation of grant 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: The year specific Free Application for Federal Student Aid reference currently contained in this regulation is being deleted and instead located in a new central regulation, 11 KAR 4.060.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to eliminate the necessity of a date change in this regulation every year.

(c) How the amendment conforms to the content of the authorizing statute: The amendment conforms to the content of the authorizing statute by relocating the date-specific FAFSA reference to a new administrative regulation.

(d) How the amendment will assist in the effective administration of the statute: The amendment will assist in the effective administration of the statute by eliminating the need for annual amendment to this administrative regulation as well as other regulations with date-specific application references. Instead, only the new central regulation will require annual amendment.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The proposed amendment would not affect any individuals as it merely changes the location wherein the FAFSA Application is located in the 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: The amendment merely changes the referencing location of the FAFSA.

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

(a) Initially: There is no cost to implement this administrative regulation.

(b) On a continuing basis: Same as 5(a).

(6) What is the source of the funding to be used for the implementation of this administrative regulation: Grants for students under the College Access Program and the Kentucky Tuition Grant Program are funded from net lottery revenues transferred to the authority for grant and scholarship programs and administrative costs are borne by the authority through receipts of the authority.

(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 administrative regulation does not establish any fees, nor does this administrative regulation directly or indirectly increase any fees.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: The administrative regulation does not establish any fees, nor does this administrative regulation directly or indirectly increase any fees. Tiernag was not applied. It is not applicable to this amendment. This administrative regulation is intended to provide equal opportunity to participate, and consequently does not inherently result in disproportionate impacts on certain classes of regulated entities. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution. The regulation provides equal treatment and opportunity for all applicants and recipients.

KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY
Division of Student and Administrative Services

(AMENDMENT)

11 KAR 5:140. KTG award determination procedure.

RELATES TO: KRS 164.744(2)-164.753(4), 164.780, 164.785
STATUTORY AUTHORITY: KRS 164.748(4), 164.753(4)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 164.748(4) requires the authority to promulgate administrative regulations pertaining to the awarding of grants, scholarships, and honoray scholarships as provided in KRS 164.740 to 164.789. KRS 164.753(4) requires the authority to promulgate administrative regulations pertaining to grants. This administrative regulation establishes the award determination procedures for the Kentucky tuition grant program.

Section 1. Kentucky Tuition Grant (KTG) Program Awards. An application submitted pursuant to 11 KAR 5:130 shall be reviewed for determination of eligibility for a KTG.

Section 2. KTG Need. For each KTG eligible applicant, the KTG need shall be computed according to the following formula: KTG need equals total cost of education minus the sum of:

(1) Expected Pell grant;
(2) Expected family contribution; and
(3) CAP grant.

Section 3. KTG Award. (1) If an applicant does not qualify for a CAP grant and the KTG need is an amount equal to or greater than $200, the KTG shall be the lesser of the KTG need or the maximum grant authorized by KRS 164.785(5), except that KTG awards shall be offered only to the extent funds are available.

(2) If an applicant does not qualify for a CAP grant, and the KTG need is an amount less than $200, an award shall not be made.

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Section 4. (1) A KHEAA grant shall not exceed the cost of tuition and fees charged to the student during the academic year of the award.

(2) A KHEAA grant awarded to an incarcerated individual shall be considered an overaward to the extent that the KHEAA grant, in combination with financial assistance received from other sources, exceeds the student's actual cost for tuition, fees, and books.

(3) A semester award shall not exceed tuition and fee charges for that semester.

(4) A KHEAA grant award shall not be made for a summer academic term.

Section 5. (1) A KHEAA grant award shall not exceed the applicant's total cost of education less expected family contribution and other anticipated student financial assistance.

(2) The authority shall reduce or revoke a KHEAA grant upon delivery of documentation that financial assistance from other sources in combination with the KHEAA grant exceeds the educational institution's determination of financial need for that student.

(3) The KHEAA grant program officer (KGFO) and the grant recipient shall make every reasonable effort to provide the authority the information needed to prevent an overaward.

(4) If the applicant's expected family contribution, disbursed KHEAA grant amount, plus other student financial assistance exceeds his need by more than $300, the amount over $300 shall be considered to be an overaward. If an overaward occurs, this amount shall be returned to the authority immediately.

Section 6. (1) If the authority receives revised data that, upon recomputation, results in the student becoming ineligible for a KHEAA grant that has already been offered, but not disbursed, the grant shall be revoked.

(2) If the student is determined to be ineligible after the KHEAA grant has been disbursed, the student shall repay to the authority the entire amount of the KHEAA grant for which the student was ineligible.

Section 7. (1) If the authority receives revised data that, upon recomputation, necessitates reduction of the KHEAA grant and the grant has not yet been disbursed, the reduction shall be made to both the fall and spring disbursements, and the student shall be notified of the reduction.

(2) If the grant for the fall academic term has already been disbursed, the reduction shall be made to the spring disbursement.

(3) If both the fall and spring disbursements have been made, the student shall repay the overaward to the authority.

Section 8. Students requested by the institution to provide verification of data for any financial assistance program shall provide the verification before receiving disbursement of a KHEAA grant. Any student who is awarded a KHEAA grant who fails to provide verification requested by the educational institution shall be deemed ineligible, and the grant shall be revoked.

JIM JACKSON, Chair
APPROVED BY AGENCY: May 25, 2006
FILED WITH LRC: June 15, 2006 at 11 a.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Friday, July 21, 2006 at 10 a.m. at 100 Airport Road, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing 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.

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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 in fees or funding will be necessary.

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

(9) TIERING: Is tiering applied: Tiering was not applied. It is not applicable to this amendment. This administrative regulation is intended to provide equal opportunity to participate, and consequently does not inherently result in disproportionate impacts on certain classes of regulated entities. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution. The regulation provides equal treatment and opportunity.

KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY
Division of Student and Administrative Services
(AMendment)

11 KAR 5:145. CAP grant award determination procedure.

RELATES TO: KRS 164.744(2), 164.753(4), 164.7535, 164.7889(5)
STATUTORY AUTHORITY: KRS 164.748(4), 164.753(4), 164.7889(3), 164.7889(5)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 164.748(4) requires the authority to promulgate administrative regulations pertaining to the awarding of grants, scholarships, and honorary scholarships as provided in KRS 164.740 to 164.798. And 164.753(4) requires the authority to promulgate administrative regulations pertaining to grants. KRS 164.7889(3) requires the authority to promulgate an administrative regulation that increases both the maximum amount available under the grant programs, and increases the average income level for qualification for the grant programs if sufficient funds are available. This administrative regulation prescribes the award determination procedures for the CAP Grant Program.

Section 1. Each application submitted pursuant to 11 KAR 5:130 shall be reviewed for determination that all eligibility requirements established in 11 KAR 5:034 are met. To qualify for a CAP award based on financial need, the applicant's expected family contribution shall be $3,850 or less.

Section 2. CAP Grant Award. (1) Except as provided in subsection (2) of this section, the maximum CAP grant in any semester for an applicant accepted for enrollment on a full-time basis as determined by the educational institution in an eligible program shall be the lesser of:

(a) $950 ($800); or
(b) The amount of eligibility the student has remaining within the aggregate KHEAA grant limit.

(2) The maximum CAP grant in any semester for an applicant accepted for enrollment on less than a full-time basis as determined by the educational institution in an eligible program shall be:

(a) The amount specified in subsection (1)(a) of this section:
1. Divided by twelve (12); and
2. Multiplied by the number of credit hours in which the applicant is accepted for enrollment; and
(b) Not in excess of the maximum specified in subsection (1)(b) of this section.

(3) For any academic year, a student shall not receive more than $1,900 ($1,700) for an aggregate CAP grant award.

Section 3. (1) A KHEAA grant awarded to an incarcerated individual shall be considered an overaward to the extent that the KHEAA grant, in combination with financial assistance received from other sources, exceeds the student's actual cost for tuition, fees, and books.

(2) A KHEAA grant award shall not be made for a summer academic term.

Section 4. (1) A KHEAA grant award shall not exceed the applicant's cost of education less expected family contribution and other anticipated student financial assistance.

(2) The authority shall reduce or revoke a KHEAA grant upon receipt of documentation that financial assistance from other sources in combination with the KHEAA grant exceeds the determination of financial need for that student.

(3) The KHEAA Grant Program Officer (KGPO) and the grant recipient shall make every reasonable effort to provide the authority the information needed to prevent an overaward.

(4) If the applicant's expected family contribution, disbursed KHEAA grant amount, plus other student financial assistance exceeds need by more than $300, any amount over $300 shall be considered to be an overaward. If an overaward occurs, this amount shall be returned to the authority immediately.

Section 5. (1) If the authority receives revised data that, upon recomputation, results in the student becoming ineligible for a KHEAA grant that has already been offered, but not disbursed, the grant shall be revoked.

(2) If the student is determined to be ineligible after the KHEAA grant has been disbursed, the student shall repay to the authority the entire amount of the KHEAA grant.

Section 6. If the educational institution receives revised data that, upon recomputation, necessitates reduction of the KHEAA grant, and:

(1) If the grant has not yet been disbursed for the fall academic term, the reduction shall be made to both the fall and spring disbursements, and the educational institution shall notify the student of the reduction;

(2) If the grant for the fall academic term has already been disbursed and the student enrolls for the spring academic term, the reduction shall be made to the spring disbursement, and the educational institution shall notify the student of the reduction;

(3) If the grant for the fall academic term has already been disbursed and the student does not enroll for the spring academic term, the educational institution shall notify the student of the fall overaward and the student shall repay the overaward to the authority;

(4) If both the fall and spring disbursements have been made, the educational institution shall notify the student of the overaward and the student shall repay the overaward to the authority.

Section 7. (1) Students requested by the institution to provide verification of data for any financial assistance program shall provide the verification before receiving disbursement of a KHEAA grant.

(2) Any student who is a recipient of a KHEAA grant who fails to provide verification requested by the participating institution shall be deemed ineligible, and the grant shall be revoked.

JIM JACKSON, Chair
APPROVED BY AGENCY: May 25, 2006
FILED WITH LRC: June 15, 2006 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Friday, July 21, 2006 at 10 a.m. at 100 Airport Road, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing 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. 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 Monday, July 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: Mr. Richard F. Casey, General Counsel, Kentucky Higher Education Assistance Authority, P.O. Box 798,
VOLUME 33, NUMBER 1 – JULY 1, 2006

REGULATOR IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Linda Renschler

(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation prescribes the award determination procedures for the CAP Grant Program.
(b) The necessity of this administrative regulation: KRS 164.748(4) requires the authority to promulgate administrative regulations pertaining to the awarding of grants, scholarships, and honors scholarship as provided in KRS 164.740 to 164.785. KRS 164.753(4) requires the authority to promulgate administrative regulations pertaining to grants. KRS 164.788(3) requires the authority to promulgate an administrative regulation that increases both the maximum amount available under the grant programs, and increases the average income level for qualification for the grant programs if sufficient funds are available.
(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation prescribes the award determination procedures for the CAP Grant Program.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation ensures provisions that students applying for a CAP grant meet the required financial need criteria and those students receive the maximum CAP grant allowed for any academic period.
(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 to this administrative regulation will change the existing administrative regulations as provided in KRS 145 Section 2(1)(a) and (3) to reflect the new award amount for the 2006-2007 academic year.
(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to reflect the new maximum award amount for the 2006-2007 academic year.
(c) How the amendment conforms to the content of the authorizing statutes: KHEAA is required to promulgate administrative regulations pertaining to the awarding of grants pursuant to KRS 164.753(4). This administrative regulation establishes the award determination procedures for the College Access Program (CAP) Grant.
(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 increasing the maximum award amount.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All students who are eligible to receive a CAP grant at Kentucky's public institutions.
(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: All students who are eligible to receive a CAP grant at Kentucky's public institutions will be positively impacted by the increased award amount in Sections 2(1) and (3).
(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: There will be no additional cost because the allocation of state lottery revenues is sufficient to offset the increased award amount.
(b) On a continuing basis: Same as (5)(a) above.
(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Grants for students under the College Access Program are funded from net lottery revenues transferred to the Authority for grant and scholarship programs and administrative costs are borne by the authority through receipts of the authority.
(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 administrative regulation does not establish any fees, nor does this administrative regulation directly or indirectly increase any fees.
(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: The administrative regulation does not establish any fees or directly or indirectly increase any fees.
(9) TIERING: Is tiering applied? Tiering was not applied to the amendment of this administrative regulation. The concept is not applicable to this amendment of this administrative regulation. The administrative regulation is intended to provide equal opportunity to participate within parameters, and consequently does not inherently result in disproportionate impacts on certain classes of regulated entities or address a particular problem to which certain regulated entities do not contribute. Disparate treatment of any person or entity affected by 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. The regulation provides equal treatment and opportunity for all applicants and recipients.

KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY
Division of Student and Administrative Services
(11 KAR 6:010, KHEAA Work-Study Program.

RELATES TO: KRS 164.744(2), 164.748(4), 164.753(6)
STATUTORY AUTHORITY: KRS 164.748(4), 164.753(6)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 164.748(4) requires the authority to promulgate administrative regulations governing work-study payments. This administrative regulation establishes the KHEAA Work-Study Program.

Section 1. Definitions. (1) "Administrative cost allowance" means a payment negotiated between the authority and a participating institution for annual costs directly related to the administration of the KWSP not to exceed eight (8%) percent of the gross wages earned, the amount requested by the institution, or $15,000 annually, whichever is least.
(2) "Alternate work plan" means a work-study arrangement in which a participating student alternates a school term with a work term in accordance with Section 2 of this administrative regulation.
(3) "Authority" is defined in KRS 164.740(1).
(4) "Career-related work experience" means any job which has a correlation with the participating student's career direction determined by the participating institution and evidenced by the student's major course of study.
(5) "Cost of education" means those expenses commonly related to obtaining an education at the participating institution plus those costs directly related to the participating student's KWSP work experience, including required dues and travel (at the rate allowed for state employee travel reimbursement) from the school to the place of employment or, under an alternate work plan, from the student's residence to the place of employment.
(6) "Eligible institution" is defined in KRS 164.740(3).
(7) "Financial need" means the total cost of education less financial assistance received from all sources, other than KWSP employment, including grants, loans, and scholarships.
(8) "Full-time" means the number of credit hours determined by the participating institution to constitute full-time enrollment, which:
(a) is generally twelve (12) semester hours, twenty-four (24) clock hours, or six (6) summer school hours; and
(b) Shall not include academic credit earned from KWSP employment.
(9) "KWSP" means the KHEAA work-study program.
(10) "Participating Institution" is defined in KRS 164.740(13).
(11) "Prevailing wage rate" means a base rate of pay per hour for a KWSP participating student who is or would be performing equal job tasks as another employee, plus benefits paid to another employee having the same status as the KWSP employee.
(12) "Private employer" means an employer in the private
sector, other than the institution that the participating student is attending.

(13) "School term" means the equivalent of one (1) semester, one (1) quarter, or one (1) summer school term.

(14) "Wage reimbursement" means a payment:
(a) Made to a participating employer by a participating institution as reimbursement for wages paid to a participating student; and
(b) Specified in an agreement between the participating employer and the participating institution.

(15) "Work study" is defined in KRS 164.740(20).

Section 2. Alternate Work Plan. A participating student shall be
considered a participant under an alternate work plan if the student:
(1) Attends school full time one (1) school term;
(2) Works full time the next school term, including a summer,
for a participating employer;
(3) Is not enrolled at least half-time during the term of employ-
ment; and
(4) Returns to school full time the following school term.

Section 3. Institutional Eligibility. To participate in the KWSP,
an educational institution shall:
(1) Be an eligible institution, located within Kentucky;
(2) Have in force an administrative agreement with the authority pursuant to 11 KAR 4.040;
(3) Submit a request for funding; and
(4) Execute a supplemental contractual arrangement with the authority and a participating employer.

Section 4. Funding Allocation Process. (1) Each year, the
authority shall invite an eligible institution to submit a proposal for
funding and shall provide instructions for submitting the proposal. The
authority shall consider a proposal properly submitted by an
eligible institution by the date specified in the invitation to partic-
ipate. The authority shall award an administrative cost allowance, if
the institution demonstrates need, to administer the KWSP for one
(1) year. At least seventy-five (75) percent of wage reimbursement
dollars shall be utilized with private employers.
(2) The authority shall consider the institution’s request for
funding and its past performance in the KWSP in the determination
of approval for funding and the funding level. The authority shall
evaluate the institution’s level of participation in and administration of
other programs of student financial assistance funded or admin-
istered by the authority and the institution’s ability to:
(a) Comply with this administrative regulation and contractual
obligations under the KWSP;
(b) Administer the program cost-effectively with the greatest
results for students, evidenced by previous years’ program records;
(c) Utilize the wage-reimbursement dollars allocated, evi-
denced by previous years’ program records;
(d) Avoid using KWSP dollars to supplant existing work-related
programs for students; and
(e) Adequately monitor program activities, including eligibility
determination of students and employers, continued eligibility of
students and employers, and actual job activities as they relate to
students’ career-related work experience.
(3)(a) At least ninety (90) percent of the available funds that do
not exceed the appropriation for the preceding fiscal year shall be
awarded to eligible institutions that participated and expended all
or the major portion of their wage reimbursement allotment during
the prior year.
(b) If available funds do not exceed the appropriation for the
preceding fiscal year, the authority shall not award more than ten
(10) percent of available funds to eligible institutions that did not
participate or had minimal participation in the KWSP during the
preceding fiscal year.
(c) Allocation by the authority of available funds that exceed
the appropriation for the preceding fiscal year shall not be con-
strained by the level of participation by an eligible institution during
the prior year.
(d) If available funds are not sufficient to award each institution
the amount requested, the authority shall allocate funds to some or
all of the eligible institutions that submit requests for funding, taking
into consideration the institution’s past performance and level of
funding under the KWSP, and the institution’s level of participation
and demonstrated capability to administer other programs of stu-
dent financial assistance funded or administered by the authority.

Section 5. Employer Eligibility. To participate in the KWSP, an
employer shall:
(1) Provide a bona fide career related work experience for
a participating student as determined by the participating institution
in which the student is enrolled and submit a descriptive position
analysis to the participating institution;
(2)(a) If the employer is not a participating institution, execute a
KWSP employer agreement with each participating institution from
which a participating student is hired, or
(b) If the employer is a participating institution, agree with the
authority to be bound by the terms of a KWSP employer agree-
ment;
(3) Provide a Kentucky work site for a participating student
employed by the employer;
(4) Not be a business entity formed substantially for the pur-
pose or intention of participating in the KWSP; and
(5) Not utilize a participating student in a work environment that
is sectarian in nature or that involves political activity.

Section 6. Student Eligibility. To participate in the KWSP, a
student shall:
(1) Be a citizen of the United States;
(2) Be a Kentucky resident, as determined by the participating
institute in accordance with 13 KAR 2 045;
(3) Be enrolled or accepted for enrollment on at least a half-
time basis at a participating institution, unless the student is partic-
ipating in an alternate work plan;
(4) Demonstrate financial need;
(5) Be in good standing and making satisfactory academic
progress toward completion of his educational program, as deter-
mined by the participating institution, and have a cumulative grade
point average of not less than the equivalent of a "C" (inclusive of
all postsecondary courses attempted for a postsecondary student
or secondary school grade point average for an entering fresh-
man);
(6) Not be participating in another work program administered
by the participating institution;
(7) Submit a completed Work-study Program Student Application
as set forth in 11 KAR 4.080, Section 1(2), to the participating
institution, properly completed in accordance with the instructions,
and be approved for participation by the participating institution;
(8) Not be in default on a financial obligation to the authority
under a program administered by the authority pursuant to KRS
164.740 through 164.7891, except that ineligibility for this reason
may be waived by the executive director of the authority, at the rec-
ommendation of a designated staff review committee, for cause;
and
(9) Execute an employment agreement required by the partici-
pating institution.

Section 7. Employer Responsibilities. To receive wage reim-
bursement, a participating employer shall:
(1) Immediately notify the participating institution in writing if a
participating student’s employment is terminated, stating the rea-
son for and effective date of termination;
(2) Report promptly to the participating institution a significant
change of the position assignment or the student’s work assignment;
(3) Submit to the participating institution on a regular basis a
certified, accurate proof of wages paid to a participating student;
(4) Pay a participating student the prevailing wage rate, which
shall not be less than the federal minimum wage;
(5) Comply with all federal and state employment, safety and
civil rights laws applicable to the position filled;
(6) Not, without prior consent of the participating institution,
permit or require a participating student to work in excess of:
(a) Thirty (30) hours per week for a student currently enrolled
less than full time;
(b) Twenty (20) hours per week for a student currently enrolled
full time; and
(c) Forty (40) hours per week for a student employed under an
alternate work plan;
(7) Permit on-site inspection and review of records by a repre-
sentative of the participating institution and the authority during
normal business hours; and
(9) Ensure that a regular employee is not displaced by a
KWSW participating student.

Section 8. Student Responsibilities. A participating student
shall:
(1) Participate in all screening or preplacement activities re-
quired by the participating institution;
(2) Maintain eligibility pursuant to Section 6 of this administra-
tive regulation, and immediately notify the participating institution in
writing of any change that affects the student’s continued eligibility;
(3) Be available for a job interview if requested by a participat-
ing employer; and
(4) Perform all reasonable employment obligations and comply
with all reasonable policies and requirements of the participating
employer.

Section 9. (1) An appeal regarding student or employer partici-
pation shall be directed to the participating institution and shall be
reviewed, settled or determined by an appeal committee consisting of
no fewer than three (3) individuals.
(2) An appeal regarding institutional eligibility or participation
shall be determined by the authority in accordance with 11 KAR
4.020.

[Section 10 — Incorporation by Reference. (1) "KHEAA Work-
Study Program: Student Application" form, July, 2001, is incorpo-
rated by reference.
(2) This material may be inspected, copied, or obtained, sub-
ject to applicable copyright law.
(a) The Kentucky Higher Education Assistance Authority, 1560
U.S. 127 South, Frankfort, Kentucky 40601, Monday through Fri-
day, 8 a.m. to 4:30 p.m.; or
(b) A participating institution during that institution’s regular
business hours.

JIM JACKSON, Chair
APPROVED BY AGENCY: May 25, 2006
FILED WITH LRC: June 15, 2006 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A
public hearing on this administrative regulation shall be held on
Friday, July 21, 2006 at 10 a.m. at 100 Airport Road, Frankfort,
Kentucky 40601. Individuals interested in being heard at this hear-
ing shall notify the 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 Monday, July 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: Mr. Richard F. Casey, General Counsel,
Kentucky Higher Education Assistance Authority, P.O. Box 798,
Frankfort, Kentucky 40602-0798, phone (502) 696-7290, fax (502)
696-7293.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Linda Ranschur
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administra-
tive regulation establishes the KHEAA Work-Study Program as
authorized by KRS 164.748(4) and 164.753(6).
(b) The necessity of this administrative regulation: This admin-
lative regulation is necessary to set forth the procedures to be
followed by the authority in administering the KHEAA Work-Study
Program as well as criteria and guidelines for participation in
the program by post-secondary institutions, private employers and
students.
(c) How this administrative regulation conforms to the content
of the authorizing statutes: KRS 164.748(4) requires the authority
to promulgate administrative regulations governing the KHEAA
work-study program.
(d) How this administrative regulation currently assists or will
assist in the effective administration of the statutes: This ad-
ministrative regulation assists in the effective administration of the
statutes by establishing procedures to be followed in administering
the KHEAA Work-Study Program as well as establishing criteria and
guidelines for participation in the KHEAA Work-Study Program by
post-secondary institutions, private employers, and students.
(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 amendment will provide a means to remove the KHEAA
Work-Study Program Application to an administrative regulation
and will instead reference its new location in 11 KAR
4.080, Section 1(2), a new central regulation.
(b) The necessity of the amendment to this administrative
regulation: The proposed amendment is necessary in order to
provide a centralized location for all student aid applications in-
cluding the Work-Study Program.
(c) How the amendment conforms to the content of the
authorizing statutes: The amendment conforms to the content of
the authorizing statute by relocating the date-specific Work-Study
Program Application to a new administrative regulation.
(d) How the amendment will assist in the effective administra-
tion of the statutes: The amendment will assist in the effective
administration of the statutes by eliminating the need for amendment
to this administrative regulation as well as other regulations with
date-specific application references. Instead, only the new central
regulation will require annual amendment.
(3) List the type and number of individuals, businesses, organi-
zations, or state and local governments affected by this administra-
tive regulation: The proposed amendment would not affect any
individuals as it merely changes the location wherein the Work-
Study Application is located in the 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: The
amendment merely changes the referencing location of the Work-
Study Program Application.
(5) Provide an estimate of how much it will cost to implement
this administrative regulation:
(a) Initially: None
(b) On a continuing basis: See 5(a) above.
(6) What is the source of the funding to be used for the imple-
mentation and enforcement of this administrative regulation: The
source of funding appropriated for the KHEAA Work-Study Pro-
gram is agency funds (revenues) which are used for direct program
benefits. KHEAA's cost for administering this program are included
in the agency's general administration appropriation, also funded
by agency funds.
(7) Provide an assessment of whether an increase in fees or
funding will be necessary to implement this administrative regu-
lation, if new, or by the change if it is an amendment: No increase in
fees will be necessary. No increase in fees or funding will be
necessary to amend this administrative regulation.
(8) State whether or not this administrative regulation estab-
lishes any fees or directly or indirectly increases any fees: It does
not establish or increase any fees.
(9) TIERING: Is tiering applied? Tiering was not applied. It is
not applicable to this amendment. This administrative regulation is
intended to provide equal opportunity to participate, and conse-
quence does not inherently result in disproportionate impacts on
certain classes of regulated entities. The "equal protection" and
"due process" clauses of the Fourteenth Amendment of the U.S.
Constitution may be implicated as well as Sections 2 and 3 of the
Kentucky Constitution. The regulation provides equal treatment
and opportunity for all applicants and recipients.

KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY
Division of Student and Administrative Services
(Amendment)

11 KAR 8:030. Teacher scholarships.

RELATES TO: KRS 164.744(2), 164.753(3), 164.769
STATUTORY AUTHORITY: KRS 164.748(4), 164.753(3),
164.769(5), (6)(f)

NECESSITY, FUNCTION, AND CONFORMITY: KRS
164.744(2) authorizes the authority to provide scholarships and
KRS 164.753(3) requires the Kentucky Higher Education Assist-
ance Authority to promulgate administrative regulations pertaining
to standards for scholarship programs. KRS 164.769 establishes a
teacher scholarship program and requires the Kentucky Higher Edu-
cation Assistance Authority to establish the terms and condi-
tions for the award, cancellation, and repayment of teacher schol-
arships, awarded under KRS 164.769 and under prior teacher
scholarship programs administered by the Kentucky Higher Edu-
cation Assistance Authority. This administrative regulation estab-
ishes selection criteria, disbursement procedures, cancellation of
repayment procedures and repayment obligations related to schol-
arships provided under the program.

Section 1. Definitions. (1) "Authority" is defined in KRS
164.740(1).
(2) "Critical shortage area" is defined in KRS 164.769(2)(a).
(3) "Eligible program of study" is defined in KRS 164.769(2)(b).
(4) "Expected family contribution" is defined in KRS
164.769(2)(c).
(5) "Participating institution" is defined in KRS 164.769(2)(d).
(6) "Public school" means the common schools of the com-
monwealth providing preschool, elementary, middle school, or
secondary instruction.
(7) "Qualified teaching service" is defined in KRS
164.769(2)(e).
(8) "Semester" is defined in KRS 164.769(2)(f).
(9) "Summer term" is defined in KRS 164.769(2)(g).
(10) "Teaching" means performing continuous classroom in-
struction as the teacher of record in a position for which appropri-
ate regular teacher certification is a prerequisite to perform the
instruction, and does not mean classroom instruction performed
pursuant to an emergency certification or a certificate for substitute
teaching.

Section 2. Eligibility of Renewal Applicants and Selection Pro-
cess. (1) Applicants shall complete the Teacher Scholarship Ap-
lication set forth in 11 KAR 4:080, Section 1(3), [2004-2006] ac-
gording to its instructions. The applicant shall ensure that the com-
pleted application and supporting data indicating the applicant's finan-
cial need are received by the authority on or before May 1, or the
next regular business day if May 1 falls on a weekend or hol-
day, preceding the academic year for which the award is re-
quested.
(2) Eligibility of renewal applicants.
(a) A person who previously received a loan or scholarship
pursuant to KRS 156.611, 156.613, 164.765, 164.769 or 164.770
prior to July 1, 1996 shall be eligible to apply for and be awarded a
renewal teacher scholarship without consideration of expected
family contribution if, at the time of application and disbursement,
the renewal applicant has made satisfactory progress toward com-
pletion of the eligible program of study in accordance with stan-
dards prescribed by the participating institution.
(b) A person who previously received a loan or scholarship
pursuant to KRS 164.769 after July 1, 1996, shall be eligible to
apply for and be considered for a renewal teacher scholarship if, at
the time of application and disbursement, the renewal applicant
has made satisfactory progress toward completion of the eligible
program of study in accordance with standards prescribed by the
participating institution.
(3) After awards are made to all qualified renewal applicants,
applicants shall be considered and teacher scholarships shall be
awarded to recipients in the following order until funds are de-
pleted:
(a) Initial applicants who meet the standards and requirements
established by the Education Professional Standards Board pursuant
to KRS 161.028 and have been unconditionally admitted to a
teacher education program shall be ranked in ascending order by
expected family contribution.
(b) Initial applicants who have not yet been admitted to a
teacher education program but who meet the standards and re-
quirements established by the Education Professional Standards
Board pursuant to KRS 161.028 for admission to a teacher educa-
tion program shall be ranked in ascending order by expected family
contribution.
(c) Otherwise eligible initial applicants seeking admission to a
teacher education program shall be ranked in ascending order by
expected family contribution.

Section 3. Award Maximums. (1) The amount of a teacher
scholarship award shall be calculated by determining the student's
total cost of education minus expected family contribution and the
amount of financial aid received or expected to be received during
the academic period. The amount of financial aid received or ex-
pected to be received during the academic period shall not include
any amounts available from any student loan or work-study pro-
grams.
(2) The maximum teacher scholarship award for a student
classified as a junior, senior, postbaccalaureate, or graduate shall
be $1,250 for a summer session, $2,500 for a semester, and
$5,000 for an academic year (exclusive of a summer session).
(3) The maximum teacher scholarship award for a student
classified as a freshman or sophomore shall be $325 for a sum-
mer session, $625 for a semester, and $1,250 for an academic
year (exclusive of a summer session).
(4) The maximum award to an eligible student enrolled less
than full time in the last semester or summer term during which a
baccalaureate, postbaccalaureate or master's degree will be com-
pleted shall be:
(a) $210 per credit hour if the student is enrolled during a
regular semester;
(b) $105 per credit hour if the student is enrolled in a summer
term.

Section 4. Disbursements. (1) Disbursement of a teacher
scholarship shall be made at the beginning of each semester or
summer session and each disbursement shall be evidenced by a
promissory note, prescribed by the authority, in which the schol-
arship recipient shall agree to repay the scholarship funds or render
qualified teaching service in lieu thereof.
(2) The money awarded under the Teacher Scholarship Pro-
gram shall be transmitted directly to the participating institution
on behalf of all students eligible to receive the scholarship by elec-
tronic funds transfer.
(3) The authority shall send to the participating institution a
disbursement roster containing each recipient's name and Social
Security number.
(4) The participating institution shall hold the funds solely for
the benefit of the student eligible to receive the scholarship and the
authority until the recipient has registered for classes for the period
of enrollment for which the scholarship is intended.
(5) Upon the recipient's registration, the participating institu-
tion shall immediately credit the recipient's account and notify the
recipient in writing that it has so credited that account, and deliver
to the recipient any remaining scholarship proceeds.
(6) The participating institution shall indicate on the disburse-
ment roster the date funds were either credited to the student's
account or disbursed to the student, the name of a recipient for
whom funds are being returned, the amount being returned, and the
reason funds are being returned.
(7) If a recipient does not register for the period of enrollment
for which the scholarship was awarded, or a registered student
withdraws or is expelled prior to the first day of classes of the pe-
riod of enrollment for which the scholarship is awarded, the school
shall return the proceeds to the authority pursuant to Section 10 of
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this administrative regulation.

(8) The school shall retain a copy of the disbursement roster for its records and forward the original roster and any undisbursed scholarship funds to the authority not later than thirty (30) days following receipt of the roster and the funds.

(9)(a) If a recipient subsequently refuses to repay the scholarship on grounds that the student was unaware of or did not receive delivery of the scholarship proceeds from the school, upon written request from the authority, the school shall promptly provide documentary evidence to the authority that the recipient received or had funds credited to his student account and was notified of this transaction.

(b) The school shall otherwise reimburse the authority for any amount of the scholarship that is unenforceable absent that documentary evidence.

(c) The obligation of the school to provide the documentary evidence specified in paragraph (a) of this subsection shall continue until the recipient’s obligations for repayment of the scholarship is paid in full or otherwise discharged.

Section 5. Cancellation. (1) A recipient rendering qualified teaching service in a designated critical shortage area shall remain eligible for the critical shortage credit provided by KRS 164.769(6)(c) if:

(a) The authority determines that an area is no longer a critical shortage area; and

(b) The recipient continues to render qualified teaching service in the area.

(2) A recipient who received a teacher scholarship prior to July 1, 1996, in return for agreeing to obtain the appropriate recertification and to teach in a critical shortage area upon completion of the recertification program shall receive cancellation of the repayment obligation if the recipient renders qualified teaching service in that area or in another critical shortage area.

(3) If a recipient has received loans or scholarships from more than one (1) program administered by the authority, which require a period of qualified teaching service for repayment or cancellation, the teaching requirements shall not be fulfilled concurrently. Unless the authority determines otherwise for cause, loans or scholarships from more than one (1) program shall be repaid or cancelled by qualified teaching service in the same order in which they were received. If a recipient has received a loan or scholarship pursuant to KRS 156.611, 156.613, 164.768, 164.769 or 164.770 during the same semester as receiving a scholarship pursuant to KRS 161.165, the loan or scholarship received pursuant to KRS 156.611, 156.613, 164.768, 164.769 or 164.770 shall be repaid or cancelled by qualified teaching service prior to the scholarship received pursuant to KRS 161.165.

(4) Verification of qualified teaching service shall be submitted to the authority in writing, signed by the local school district superintendent or building principal.

Section 6. Repayment. (1) A recipient failing to attain certification after completion of the eligible program of study or to commence rendering qualified teaching service within the six (6) month period following completion of the eligible program of study shall immediately become liable to the authority to pay the sum of all promissory notes and accrued interest thereon, unless the authority grants a deferral for cause.

(2) The interest rate applicable to repayment of a teacher scholarship under this section shall be six (6) percent per annum beginning April 1, 2005. Prior to April 1, 2005, the interest rate shall be twelve (12) percent per annum.

Section 7. Notifications. A recipient shall notify the authority within thirty (30) days of:

(1) Change in enrollment status;

(2) Cessation of full-time enrollment in an eligible program of study;

(3) Employment in a qualified teaching service position; or

(4) Change of name or address.

Section 8. Repayment Schedule. Written notification of demand for repayment shall be sent by the authority to the scholarship recipient’s last known address and shall be effective upon mailing. The authority may agree, in its sole discretion, to accept repayment in installments in accordance with a schedule established by the authority. Payments shall first be applied to interest and then to principal on the earliest unpaid promissory note.

Section 9. Records. A participating institution shall maintain complete and accurate records pertaining to the eligibility, enrollment and progress of each student receiving aid under this program and the disbursement of funds and institutional charges as may be necessary to audit the disposition of these funds. The institution’s records shall be maintained for at least five (5) years after the student ceases to be enrolled at the institution.

Section 10. Refunds. (1) A student who fails to enroll, withdraws, is expelled from the institution, or otherwise fails to complete the program on or after his first day of class of the period of enrollment or changes enrollment status may be due a refund of monies paid to the institution on behalf of that student or a repayment of cash disbursements made to the student for educational expenses.

(2) If the student received financial assistance administered by the authority, all or a portion of the refund and repayment shall be due to the authority for its financial assistance programs in accordance with this section.

(3) The institution shall adopt and implement a fair and equitable refund policy for financial assistance administered by the authority which shall be:

(a) A clear and conspicuous written statement;

(b) Made available to a prospective student, prior to the earlier of the student’s enrollment or the execution of the student’s enrollment agreement, and to currently-enrolled students;

(c) Consistently administered by the institution; and

(d) Made available to the authority upon request.

(4) The institution’s refund policy for financial assistance administered by the authority shall either:

(a) Use the same methods and formulas for determining the amount of a refund as the institution uses for determining the return of federal financial assistance funds; or

(b) Be a separate and distinct policy adopted by the institution that is based upon:

1. The requirements of applicable state law; or

2. The specific refund standards established by the institution’s nationally-recognized accrediting agency.

(5) The amount of the refund shall be determined in accordance with the educational institution’s refund policy relative to financial assistance funds, except as provided in subsection (7) of this section.

(6) If the institution determines that a refund of financial assistance is due in accordance with its policy, the institution shall allocate to the financial assistance programs administered by the authority the refund and repayment in the following descending order of priority prior to allocating the refund to institutional or private sources of financial assistance:

(a) CAP grant;

(b) KTG;

(c) Teacher scholarship;

(d) Kentucky Educational Excellence Scholarship;

(e) National Guard tuition assistance;

(f) Early Childhood Development Scholarship.

(7)(a) If a teacher scholarship recipient officially or unofficially withdraws from or is expelled by an institution before the first day of classes of the award period, the award shall be deemed an overaward and a full refund and repayment of the teacher scholarship shall be required, notwithstanding any institutional policy to the contrary.

(b) If the institution is unable to document the student’s last date of attendance, any teacher scholarship disbursement for that award period shall be subject to full refund.

(c) If a teacher scholarship recipient’s enrollment is terminated without an assessment of tuition and fees by the institution, the full teacher scholarship shall be subject to:

1. Cancellation, if not yet disbursed; or

2. Refund if the teacher scholarship has already been disbursed.
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(8)(a) The institution shall remit to the authority the amount of funds allocated from the refund amount to the financial assistance programs administered by the authority as soon as possible but no later than thirty (30) days after the end of the term in which the student ceased to be enrolled.

(b) Refunds by the institution transmitted to the authority shall be accompanied by:
1. The student's name and Social Security number;
2. The reason for the refund;
3. The date of enrollment status change;
4. The semester and year; and
5. The calculation used for determining the refund.

Section 11. Information Dissemination and Recruitment. The authority shall disseminate information through high school principals, counselors, and school superintendents about this program to potential recipients. The participating institution shall provide assurances that program information will be disseminated to students enrolled at the Institution. The participating institution shall actively recruit students from minority population groups for participation in this program.

(2) The material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Higher Education Assistance Authority, 4050 U.S. 127 South, Suite 102, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.]

JIM JACKSON, Chair
APPROVED BY AGENCY: May 25, 2006
FILED WITH LRC: June 15, 2006 at 11 a.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Friday, July 21, 2006 at 10 a.m. at 100 Airport Road, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify the agency in writing five workdays prior to the hearing, of their intent to attend. If no notice of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until Monday, July 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: Mr. Richard F. Casey, General Counsel, Kentucky Higher Education Assistance Authority, P.O. Box 788, Frankfort, Kentucky 40602-0788, phone (502) 696-7290, fax (502) 696-7293.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Linda Renscher
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation establishes the terms and conditions for the award, cancellation, and repayment of teacher scholarships, awarded under KRS 164.769 and under prior teacher scholarship programs administered by the Kentucky Higher Education Assistance Authority.
(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the terms and conditions for the award, cancellation, and repayment of teacher scholarships, awarded under KRS 164.769 and under prior teacher scholarship programs administered by the Kentucky Higher Education Assistance Authority.
(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 164.744(2) authorizes the authority to provide scholarships, and KRS 164.753(3) requires the Kentucky Higher Education Assistance Authority to promulgate administrative regulations pertaining to standards for scholarship programs. KRS 164.769 establishes a teacher scholarship program and requires the Kentucky Higher Education Assistance Authority to establish the terms and conditions for the award, cancellation, and repayment of teacher scholarships, awarded under KRS 164.769 and under prior teacher scholarship programs administered by the Kentucky Higher Education Assistance Authority. This administrative regulation establishes selection criteria, disbursement procedures, cancellation of repayment procedures and repayment obligations related to scholarships provided under the program.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation currently assists in the effective administration of the Teacher Scholarship Program by establishing the terms and conditions for the award, cancellation, and repayment of teacher scholarships, awarded under KRS 164.769 and under prior teacher scholarship programs administered by the Kentucky Higher Education Assistance 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: The amendment will eliminate the reference to the yearspecific Teacher Scholarship Application in this administrative regulation and relocate it in a new central regulation, 11 KAR 4:050.
(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to eliminate the necessity of a date change in this regulation each time the program application is updated or amended.
(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statute by relocating the data-specific Teacher Scholarship Program Application reference to a new administrative regulation.
(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of the statute by eliminating the need for annual amendment to this administrative regulation as well as other regulations with date-specific application references. Instead, the new central regulation will require annual amendment.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The proposed amendment would not affect any individuals as it merely changes the location wherein the Scholarship Application is located in the 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: The amendment merely changes the referencing location of the Teacher Scholarship Program Application.
(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: It is estimated that there will be no additional administrative cost to implement this administrative regulation.
(b) On a continuing basis: Same as 5(a).
(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Teacher Scholarship Awards are funded from net lottery revenues transferred to the authority for grant and scholarship programs and administrative costs are borne by the authority through receipts of the authority.
(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 amendments to this administrative regulation.
(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: KRS 164.769(6)(f) requires the authority to establish by administrative regulation the terms and conditions for the repayment of Teacher Scholarships. KRS 164.769(6)(g) specifies that the maximum rate of interest shall be 12%. The amendment establishes a new rate of
interest at 6%, which is below the maximum permitted by the authorizing statute.

(9) TIERING: Is tiering applied? Tiering was not applied. It is not applicable to this amendment. This administrative regulation is intended to provide equal opportunity to participate, and consequently does not inherently result in disproportionate impacts on certain classes of regulated entities. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY
Division of Student and Administrative Services
(AMENDMENT)


RELATES TO: KRS 164.518
STATUTORY AUTHORITY: KRS 164.518(3), 164.746(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. Unless the applicant is seeking scholarship renewal and has registered for a capstone semester:
a. Employed at least twenty (20) hours per week in a participating early childhood facility;
b. 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
c. Employed at least twenty (20) hours per week, providing direct instruction to children as a preschool associate teacher or as a teaching assistant in a public preschool program by a participating early childhood facility;
4. 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;
b. An applicant who is enrolled in the final semester of study before earning an ECDA-approved early childhood development credential may be enrolled in a capstone course requiring full-time enrollment, but shall not receive an award amount for more than nine (9) credit hours of enrollment;
5. Pursuing an ECDA-approved early childhood development credential;
6. Ineligible 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 164.785, 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 notification of denial.
(c) If a student appeals a scholarship denial, the ECDA shall ensure that:
1. 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, 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 a participating early childhood facility upon obtaining the child development associate certificate, paid for in part by a scholarship;
(b) For one (1) year at a 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 a 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 for in part by a scholarship.

(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:
1. July 15, or the next regular business day if July 15 falls on a weekend or holiday, preceding the fall academic term for which the scholarship is requested;
2. 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;
3. 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 ("FAPSA") set forth in 11 KAR 4:080, Section 1(4)(a). 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 submitted.
(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:
   (a) July 22, or the next regular business day if July 22 falls on a
      weekend or holiday, preceding the fall academic term for which the
      scholarship is requested;
   (b) November 22, or the next regular business day if November
      22 falls on a weekend or holiday, preceding the spring academic
      term for which the scholarship is requested; or
   (c) April 22, or the next regular business day if April
      22 falls on a weekend or holiday, preceding the summer aca-
      demic 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) ECDA shall certify the eligibility determination of approved
    applicants.

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.

(2) Award maximum. The maximum scholarship amount
    awarded to an eligible applicant for an award year shall be $1,600.

[Section 5. Incorporation by Reference. (1) The following ma-
    terial is incorporated by reference:
   (a) The Early Childhood Development Scholarship Application,
      January 2001; and,
   (b) The 2006-2007 Free Application for Federal Student Aid
      (FAFSA).
   (c) This material may be inspected, copied, or obtained, sub-
      ject to applicable copyright law, at the Kentucky Higher Educa-
      tion 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: May 25, 2006
FILED WITH LRC: June 15, 2006 at 11 s.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A
public hearing on this administrative regulation shall be held on
Friday, July 21, 2006 at 10 a.m. at 100 Airport Road, Frankfort,
Kentucky 40601. Individuals interested in being heard at this hear-
ing 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.
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 Monday, July 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: Mr. Richard F. Casey, General Counsel,
Kentucky Higher Education Assistance Authority, P.O. Box 788,
Frankfort, Kentucky 40602-0788, phone (502) 699-7290, fax (502)
699-7293.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Linda Renschler

(1) Provide a brief summary of:
   (a) What this administrative regulation does: This administra-
       tive regulation establishes the applicant selection process for the
       Early Childhood Development Scholarship Program.
   (b) The necessity of this administrative regulation: KRS
       164.518(3) requires the authority to promulgate administrative
       regulations for administration of the Early Childhood Development
       Scholarship Program. This administrative regulation is necessary to
       establish the applicant selection process for the Early Childhood
       Development Scholarship Program.
   (c) How this administrative regulation conforms to the content
       of the authorizing statutes: KRS 164.518(3) requires the authority
       to promulgate administrative regulations for administration of the
       Early Childhood Development Scholarship Program. This adminis-
       trative regulation establishes the applicant selection process for the
       Early Childhood Development Scholarship Program.
   (d) How this administrative regulation currently assists or will
       assist in the effective administration of the statutes: This adminis-
       trative regulation currently assists in the effective administration of
       the Early Childhood Development Scholarship Program by estab-
       lishing the applicant selection process for the program.

(2) If this is an amendment to an existing administrative regu-
    lation, provide a brief summary of:
   (a) How the amendment will change this existing administrative
       regulation: This amendment will eliminate the references to the
       FAFSA and Early Childhood Development Scholarship Application
       and acknowledge that these references are instead located in a
       new central administrative regulation, 11 KAR 4:080.
   (b) The necessity of the amendment to this administrative regu-
       lation: The amendment to this administrative regulation is
       necessary to eliminate the necessity of a date change in this regu-
       lation every year.
   (c) How the amendment conforms to the content of the authorizing
       statutes: KRS 164.518(3) requires the authority to promulgate
       administrative regulations for administration of the Early Child-
       hood Development Scholarship Program.

(3) List the type and number of individuals, businesses, organi-
    zations, or state and local governments affected by this adminis-
    trative regulation: The proposed amendment would not affect any
    individuals as it merely changes the locations wherein the Scholar-
    ship Application and the FAFSA are located in the 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: The
    amendment merely changes the referencing location of the Schol-
    arship Application and the FAFSA.

(5) Provide an estimate of how much it will cost to implement
    this administrative regulation:
   (a) Initially: It is estimated that there will be no additional ad-
       ministrative costs to the authority in implementing the amendments
to this administrative regulation.
   (b) On a continuing basis: Same as 5(a) above.

(6) What is the source of the funding to be used for the imple-
    mentation and enforcement of this administrative regulation:
    Funding for the Early Childhood Development Scholarship Pro-
    gram is provided by appropriations from the Tobacco Settlement
    Fund. The authority does retain some of the funds for the costs
    associated in administering the Early Childhood Development
    Scholarship Program.

(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: The adminis-
    trative regulation does not establish any fees, nor does this admis-
    trative regulation directly or indirectly increase any fees.

(8) State whether or not this administrative regulation estab-
    lishes any fees or directly or indirectly increases any fees: The
    amendment to this administrative regulation neither establishes
    any fees nor directly or indirectly increases any fees.

(9) TIERING: Is tiering applied? Tiering was not applied. It is
    not applicable to this amendment. This administrative regulation is
    intended to provide equal opportunity to participate, and conse-
    quently does not inherently result in disproportionate impacts on
    certain classes of regulated entities. The "equal protection" and
    "due process" clauses of the Fourteenth Amendment of the U.S.
    Constitution may be implicated as well as Sections 2 and 3 of the
KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY
Division of Student and Administrative Services
(AMENDMENT)


RELATES TO: KRS 164.744(2), 164.748(7), (6), 34 C.F.R. 654.1-654.5, 654.30-654.32, 20 U.S.C. 1070d-31-1070d-37, and sections thereof. STATUTORY AUTHORITY: KRS 164.744(4), 164.753(3), 34 C.F.R. 654.30, 654.41, 20 U.S.C. 1070d-36, 1070d-37, 1070d-38 NECESSITY, FUNCTION, AND CONFORMITY: 20 U.S.C. 1070d-31 et seq., establishes the Robert C. Byrd Honors Scholarship Program and requires the secretary to make grants to states to provide scholarships to outstanding high school graduates who show promise of continued excellence. 20 U.S.C. 1070d-35 and 1070d-37, and 34 C.F.R. 654.30 and 654.41 require the authority, as the state agency designated to receive the grant, to establish criteria and application procedures for the selection of eligible scholars. This administrative regulation establishes application procedures and selection criteria for the administration of the Robert C. Byrd Honors Scholarship Program in Kentucky.

Section 1. Definitions. (1) *ACT score* means the composite score achieved on the American College Test at a national test site on a national test date.

(2) *Authority* is defined in KRS 164.740(1).

(3) *Award year* means the period of time from July 1 of one (1) year through June 30 of the following year.

(4) *Eligible student* is defined in KRS 164.740(5).

(5) *Federal entity* is defined in KRS 164.740(7).

(6) *High school* means a school located within or outside of the commonwealth enrolling students for secondary school instruction that is:

(a) Operated by a state; or
(b) A private, parochial, or church secondary school that has been recognized as accredited, or voluntarily complying with accreditation standards, by one (1) of the fifty (50) state departments of education or one (1) of the seven (7) Independent regional accrediting associations.

(7) *High school graduate* means an individual who receives:

(a) A high school diploma;
(b) A General Education Development (GED) Certificate; or
(c) Any other evidence recognized by the commonwealth as the equivalent of a high school diploma.

(8) *Participating institution* is defined in KRS 164.740(13).

(9) *SAT score* means the composite score achieved on the Scholastic Aptitude Test at a national test site on a national test date.

(10) *Scholar* means an individual who is selected as a Byrd Scholar.

(11) *Secretary* is defined in KRS 164.740(19).

Section 2. Eligibility Criteria. (1) Initial eligibility. To be eligible for selection as a scholar, an individual shall meet the initial eligibility criteria established in 34 C.F.R. 654.40.

(2) Continued eligibility. To remain eligible for additional awards under this program for subsequent award years, a scholar shall meet the continued eligibility criteria established in 34 C.F.R. 654.51.

Section 3. Initial Application Procedures. Applications submitted by individual students shall not be accepted. In order for an eligible student to be considered for an award under this program:

(1) The eligible student shall not have applied for consideration in a prior year; and

(2)a) For high school seniors, the eligible student's participating high school shall nominate the eligible student, and shall submit to the authority a completed application by February 15 on the Robert C. Byrd Honors Scholarship Program [2006-2006] Application form set forth in 11 KAR 4:080, Section 1(5)(a). The application shall be accompanied by the following supporting documentation pertaining to the eligible student:

(i) A certified transcript showing the cumulative grade point average for seven (7) semesters of high school;
(ii) An official ACT score or SAT score;
(iii) A high school guidance counselor's recommendation, not exceeding fifty (50) words, pertaining to the student's promise of continued academic achievement; and
(iv) A listing of honors, activities, and community service performed during high school;
or
(b) For a GED recipient, a GED coordinator shall nominate the eligible student, and submit to the authority a completed application by June 30 on the Robert C. Byrd Honors Scholarship Program [2006-2006] Application [for GED Recipients] form set forth in 11 KAR 4:080, Section 1(5)(b). The application shall be accompanied by the following supporting documentation pertaining to the eligible student:

(i) An official General Education Development score certification; and
(ii) The GED coordinator's recommendation, not exceeding fifty (50) words, pertaining to the student's promise of continued academic achievement.

Section 4. Nomination Procedures. Each participating high school shall select and submit applications as follows:

(1) Number of nominations per school. A participating high school shall submit nominations according to the following guidelines:

(a) High schools with enrollments of 1,500 or more may nominate a maximum of five (5) applicants;
(b) High schools with enrollments of 1,000-1,499 may nominate a maximum of four (4) applicants;
(c) High schools with enrollments of 500-999 may nominate a maximum of three (3) applicants; and
(d) High schools with enrollments of less than 500 may nominate a maximum of two (2) applicants.

(2) A participating high school shall nominate only eligible students who:

(a) Have a minimum:

1. ACT score of twenty-three (23); or
2. SAT score of 1060; and
(b) Have a minimum 3.5 grade point average for seven (7) semesters of high school.

(3) A GED coordinator shall nominate only eligible students who have a minimum GED score of 2700.

Section 5. Selection Procedures. (1) Applications shall be reviewed to ensure compliance with the requirements set forth in Sections 2, 3, and 4 of this administrative regulation.

(2) The authority shall sort acceptable applications according to the six (6) congressional districts in order to ensure proportional distribution.

(3) The authority shall evaluate and score applications on a scientific basis by a stratified random technique, with consideration to demonstrated outstanding academic achievement and promise of continued achievement and reasonable geographic representation throughout the state.

(4) At least one (1) scholar shall be selected among the GED recipients.

(5) A scholar shall be selected from eligible applicants without regard to:

(a) The applicant's race, color, national origin, sex, religion, disability, economic background, educational expenses, or financial need;
(b) Whether the scholar attended a high school located within or outside of the commonwealth;
or
(c) Whether the participating institution that the scholar plans to attend is public or private or is within or outside the commonwealth.

(6) A selected scholar shall agree in writing that he shall repay to the authority the total amount of the scholarship funds received for the academic term during which he receives an award if the scholar is ineligible during the academic term as determined by the participating institution or the authority.
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Section 6. Notification Procedures. The authority shall notify eligible students, tentatively selected as scholars, of their status within forty-five (45) days after the application submission deadline.

Section 7. Award Amount. (1) The amount of the annual award shall be governed by 34 C.F.R. 654.50 and 34 C.F.R. 654.51(b).

(2) A scholar shall receive an aggregate maximum of $6,000 over four (4) years for an undergraduate or an equivalent under-graduate program of study if he or she maintains eligibility.

Section 8. Disbursements. (1) The first payment shall be made at the beginning of the fall term after the participating institution has certified that the scholar is enrolled on a full-time basis and that the total amount of financial aid awarded to a scholar for a year of study, including the scholarship amount awarded pursuant to this administrative regulation, does not exceed the eligible student's total cost of attendance.

(2) The award shall be paid in at least two (2) disbursements in the amount of:

(a) One-half (1/2) in the fall term; and

(b) One-half (1/2) in the spring term.

(b) For qualified institutions, one-third (1/3) each quarter.

(3) The warrant shall be made payable to the scholar, but shall be sent to the school for delivery to the scholar.

(4)(a) Except as provided in paragraph (b) of this subsection, the award shall be utilized within twelve (12) months of the time of initial award.

(b) The authority executive director may authorize a postponement of the award utilization.

1. The postponement shall be for up to twelve (12) additional months from the date the scholar:

a. Otherwise would have enrolled in the institution after the scholarship award was made; or

b. Interrupts enrollment.

2. A postponement shall be granted only if:

a. There is sufficient good cause; and

b. The scholar requests in writing, before the payment is certified by the participating institution, that the award be delayed to postpone or interrupt his enrollment.

(c) A scholar who postpones or interrupts his enrollment at a participating institution in accordance with paragraph (b) of this subsection shall not be eligible to receive scholarship funds during the period of postponement or interruption, but shall be eligible to receive scholarship payments upon enrollment or reenrollment at a participating institution.

(d) The authority may extend the twelve (12) month suspension period without terminating the scholar's eligibility if the scholar demonstrates to the satisfaction of the authority that extended postponement or interruption is in the best interest of the scholar.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT
Contact person: Linda Remsza

(1) Provide a brief summary of:

(a) What this administrative regulation does; This administrative regulation establishes the application procedures and selection criteria for the administration of the Robert C. Byrd Honors Scholarship Program.

(b) The necessity of this administrative regulation; Title IV, Part A, Subpart 6 of the federal act, as amended, 20 U.S.C. 1070d-31 et seq., establishes the Robert C. Byrd Honors Scholarship Program and requires the Secretary to make grants to states to provide scholarships to outstanding high school graduates who show promise of continued excellence. 20 U.S.C. sections 1070d-35 and 1070d-37, and 34 C.F.R. sections 654.30 and 654.41, require the authority, as the state agency designated to receive the grant to establish criteria and application procedures for the selection of eligible scholars for the Robert C. Byrd Honors Scholarship Program.

(c) How this administrative regulation conforms to the content of the authorizing statutes; Title IV, Part A, Subpart 6 of the federal act, as amended, 20 U.S.C. 1070d-31 et seq., establishes the Robert C. Byrd Honors Scholarship Program and requires the Secretary to make grants to states to provide scholarships to outstanding high school graduates who show promise of continued excellence. 20 U.S.C. sections 1070d-35 and 1070d-37, and 34 C.F.R. sections 654.30 and 654.41, require the authority, as the state agency designated to receive the grant, to establish criteria and application procedures for the selection of eligible scholars. This administrative regulation establishes application procedures and selection criteria for the administration of the Robert C. Byrd Honors Scholarship Program.

(d) How this administrative regulation assists in the effective administration of the Robert C. Byrd Honors Scholarship Program by establishing criteria and application procedures for the selection of eligible scholars.

(e) 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 will change the existing regulation by eliminating the year-specific references to the Robert C. Byrd Honors Scholarship Program Application and the Scholarship Application for GED Recipients and providing that these are instead located in a new central regulation, 11 KAR 4.080.

(b) The necessity of the amendment to this administrative regulation; The amendment is necessary to eliminate the necessity of a date change in this regulation every year.

(c) How the amendment conforms to the content of the authorizing statutes; The amendment conforms to the content of the authorizing statute by prescribing the procedures for administration of the Robert C. Byrd Honors Scholarship program, including the establishment of selection and application criteria and procedures, designation of forms, and implementation of the applicable federal regulations governing the program.

(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 eliminating the need for annual.
amendment to this administrative regulation as well as other regulations with date-specific application references. Instead, only the new central regulation will require annual amendment.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation. The proposed amendment would not affect any individual as it merely changes the location wherein the Scholarship Applications are located in the 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: The amendment merely changes the referencing location of the Byrd Scholarship Applications.

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

(a) Initially: There will be no additional cost associated with the amendment.

(b) On a continuing basis: Same as 5(a).

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Robert C. Byrd Honors Scholarship Program is federally funded by an act approved by Congress.

(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 any fees nor does it directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Tiering was not applied. It is not applicable to this administrative regulation. This administrative regulation is intended to provide equal opportunity to participate, and consequently does not inherently result in disproportionate impacts on certain classes of regulated entities. The "exact protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution. The regulation provides equal treatment and opportunity for all applicants and recipients.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. The federal statutes and regulations that constitute the federal mandate are 20 U.S.C. sections 7070d-31 through 7070d-41 and 34 C.F.R. Part 654, subparts A, D, E, and F.

2. State compliance standards. These federal statutes and regulations establish the criteria for initial and continued eligibility of students, and establish the amount of the scholarship award. The federal criteria for eligibility and award amount are adopted by the Authority without change. The federal statutes and regulations also require the Authority to establish criteria and application procedures for the selection of eligible scholars in the Robert C. Byrd Honors Scholarship Program. Discretion is given to the Authority to establish procedures and requirements in the following areas: initial application, nomination, selection, notification, and disbursement.

Applications submitted by individual students shall not be accepted. In order for an eligible student to be considered for an initial award under this program, the eligible student shall not have applied for consideration in a prior year. For high school seniors, the eligible student's participating high school shall nominate the eligible student, and shall submit to the authority a completed application by February 15. The application shall be accompanied by a certified transcript showing the cumulative grade point average for 7 semesters of high school, an official ACT score or SAT score, a high school guidance counselor's recommendation, not exceeding fifty (50) words, pertaining to the student's promise of continued academic achievement and a letter of honors, activities, and community service performed during high school. For a GED recipient, a GED coordinator shall nominate the eligible student, and submit to the authority a completed application by February 15. The application shall be accompanied by an official General Education Development score certification and the GED coordinator's recommendation, not exceeding 50 words, pertaining to the student's promise of continued academic achievement.

For nomination purposes, participating high schools with enrollments of 1,500 or more may nominate a maximum of five applicants. High schools with enrollments of 100-999 may nominate a maximum of four applicants. High schools with enrollments of 500-999 may nominate a maximum of three applicants and high schools with enrollments of less than 500, may nominate a maximum of two applicants. A participating high school shall nominate only students who have a minimum ACT score of 23, or SAT score of 1060 and a minimum 3.5 grade point average for seven semesters of high school. For GED graduates, a GED coordinator shall nominate only eligible students who have a minimum GED score of 2700.

For selection purposes, the authority shall require review of applications to ensure compliance with the requirements set forth above, sort acceptable applications according to the 6 congressional districts in order to ensure proportional distribution, evaluate and score applications on a scientific basis by a stratified random technique, with consideration to demonstrated outstanding academic achievement and promise of continued achievement and reasonable geographic representation throughout the state. At least one scholar shall be selected among the GED recipients. A scholar shall be selected from eligible applicants without regard to the applicant's sex, race, color, national origin, sex, religion, disability, age, or A background, with the exception of whether or not the scholar attended a high school located within or outside of the Commonwealth or whether the participating Institution that the scholar plans to attend is public or private or is within or outside the Commonwealth. A selected scholar shall agree in writing that he shall repay to the authority the total amount of the scholarship funds received for the academic term during which he receives an award if the scholar is ineligible during the academic term determined by the participating institution or the authority.

For notification, the authority shall notify eligible students, tentatively selected as scholars, of their status within 45 days after the application submission deadline.

For disbursement the first payment shall be made at the beginning of the fall term after the participating institution has certified that the scholar is enrolled on a full-time basis and that the total amount of financial aid awarded to a scholar for a year of study, including the scholarship amount awarded pursuant to this administrative regulation, does not exceed the eligible student's total cost of attendance. The award shall be paid in at least two disbursements in the amount of one-half in the fall term and one-half in the spring term. The warrant will be made payable to the scholar, but will be sent to the school for delivery to the scholar. The warrant shall be utilized within 12 months of the time of initial award, except that the authority executive director may authorize for sufficient cause a postponement of the utilization of the award for up to 12 additional months, beginning on the date the scholar otherwise would have enrolled in the institution after the scholarship award or the date the scholar interrupts enrollment, if the scholar requests in writing, before the fall payment is certified by the participating institution, that the award be delayed to postpone or interrupt his enrollment. A scholar who postpones or interrupts his enrollment at a participating institution in accordance with paragraph (a) of this subsection shall not be eligible to receive scholarship funds during the period of postponement or interruption, but shall be eligible to receive scholarship payments upon enrollment or reenrollment at a participating institution. The authority may extend the 12 month suspension period without terminating the scholar's eligibility if the scholar demonstrates to the satisfaction of the authority that extended postponement or interruption of enrollment beyond the 12 month suspension is due to exceptional circumstances beyond the scholar's control or necessary for the scholar to meet a commitment.

3. Minimum or uniform standards contained in the federal mandate. The federal statutes and regulations impose specific requirements on administration of the Byrd Program with respect to eligibility and award amount. Specifically, they provide that a student is eligible to be selected as a scholar if he or she is a legal resident of the state to which he or she is applying for a scholar-
ship, is a U.S. citizen or national, provides evidence from the U.S. Immigration and Naturalization Service that he or she is a permanent resident of the United States, is in the United States for other than a temporary purpose with the intention of becoming a citizen or permanent resident, is a permanent resident of the Trust Territory of the Pacific Islands (Palau), becomes a high school graduate in the same secondary school year in which he or she submits the scholarship application, has applied or been accepted for enrollment as a full-time student at an institution of higher education, is not ineligible to receive assistance as a result of default on a federal student loan or other obligation, as provided under 34 C.F.R. 75.60 and files a Statement of Selective Service Registration Status, in accordance with the provisions of 34 C.F.R. 689.33 of the Student Assistance General Provisions regulations, with the institution he or she plans to attend or is attending. For award amount, the state education agency shall disburse $1,500 for each year of study for a maximum of 4 years of study to each scholar who is selected in accordance with the criteria established under Sec. 654.41 and meets the requirements for continuing eligibility under Sec. 654.51. The state education agency shall ensure that the total amount of financial aid awarded to a scholar for a year of study does not exceed the total cost of attendance, that loans are reduced prior to reducing a scholarship awarded under this program and that the selection process is completed, and the awards made, prior to the end of each secondary school academic year.

The Authority without change adopts the federal criteria for eligibility and award amount.

The federal statutes and regulations require the State Education Agency (SEA) to establish procedures for the following areas: initial application, nomination, selection, notification and disbursement. The federal statutes and regulations allow discretion to establish those criteria and procedures so long as they ensure that the SEA selects scholars:

(a) Who are eligible students under the criteria provided in 34 C.F.R. Sec. 654.40;
(b) Who have demonstrated outstanding academic achievement and show promise of continued achievement;
(c) In a manner that ensures an equitable geographic distribution of awards within the state; and
(i) Without regard to: Whether the secondary school each scholar attends is within or outside the scholar's state of legal residence;
(ii) Whether the institution of higher education each scholar plans to attend is public or private or is within or outside the scholar's state of legal residence;
(iii) Race, color, national origin, sex, religion, disability, or economic background; and
(iv) The scholar's educational expenses or financial need.

The federal statutes and regulations also require that the procedures established by the state educational agency ensure that the agency shall:

(a) Notify scholars of their selections and scholarship awards;
(b) Disburse the scholarship funds in accordance with 34 C.F.R. Sec. 654.50 to the scholar, the institution of higher education in which the scholar enrols, or payable to the scholar and the institution of higher education in which the scholar enrols;
(c) Complete the selection process and make the awards prior to the end of each secondary school academic year;
(d) Collect any scholarship funds improperly disbursed under Sec. 654.50;
(e) Permit a scholar to postpone or interrupt his or her enrollment at an institution of higher education without forfeiting his or her scholarship for up to 12 months, beginning on the date the scholar otherwise would have enrolled in the institution after the SEA awarded his or her scholarship or the date the scholar interrupts enrollment.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? The administrative regulation does not impose stricter requirements than those in the federal statute and regulation.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. There are no requirements in this administrative regulation that are stricter than the federal mandate.

DEPARTMENT OF THE TREASURY
(Amendment)

20 KAR 1:580. Reports to be filed by holders of unclaimed property.

RELATES TO: KRS 393.110(1)
STATUTORY AUTHORITY: KRS 393.280(4)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 393.280(4) allows the State Treasurer to promulgate administrative regulations and any reasonable and necessary rules for the enforcement of KRS Chapter 393. KRS 393.110(1) requires the holder of unclaimed property to submit annual reports to the Department of the Treasury concerning the property. This administrative regulation establishes the reporting requirements for a holder of unclaimed property.

Section 1. Reports Filed by a Holder of Unclaimed Property. A holder of unclaimed property shall annually file, in accordance with KRS 393.110, a completed, Unclaimed Property Report/Remit Form with the Department of the Treasury no later than the close of business on November 1 of each year.

(1) A holder of property presumed abandoned shall make an annual report to the Department of the Treasury concerning the property. The annual report shall cover the twelve (12) months ending on June 30 of that year. Holders are required to submit their report by diskette or compact disc in the format required by the department for ten (10) or more properties. All property so reported shall be turned over simultaneously with the report by November 1 to the Department of the Treasury. This reporting requirement applies to all properties, with the exception of travelers' checks and money orders, and shall be verified and shall include:

(a) The name, if known, and last known address, if any, of each person appearing from the records of the holder to be the owner of any property of value of $100 or more presumed abandoned under this chapter and in the case of unclaimed funds of life insurance corporations, the full name of the insured or annuitant and his or her last known address according to the records of the life insurance corporation;
(b) Identifying data of the property owner, including, but not limited to, Social Security number, date of birth, policy number, check number, name, and address of listed beneficiary(ies), etc.;
(c) Description of the property, including, but not limited to, physical description, property type codes, and the amount appearing from the records to be due, except items of value of $100 or less. The items of value of $100 or less may be reported in aggregate;
(d) The date when the property became payable, demandable, or returnable, and the date of the last known transaction with the owner with respect to the property if readily available.
(2) The holder of property presumed abandoned shall send written notice to the apparent owner, not more than 120 days or less than sixty (60) days before filing the report, stating that the holder is in possession of the property subject to this section, except the holder shall not be required to mail a notice to any apparent owner where the fair cash value of the property is $100 or less. The notice shall contain:
(a) The statement to the owner that properties are being held to which the addressee appears entitled;
(b) The name and address of the person holding the property and any necessary information regarding a change of name and address of the holder; and
(c) A statement that if satisfactory proof of claim is not presented by the owner to the holder by the date specified, the property will be placed in the custody of the department to whom all further claims must be directed.
(3) Any person, or anyone by this chapter to report property presumed abandoned, shall by November 1 of each year, turn over to the department all property so reported, unless:
(a) The person making the report or the owner of the property shall certify to the department that any or all of the statutory condi-
Section 2. Reports on Property Held in an Interest Bearing Account. If the holder of unclaimed property is required to place that property in an interest-bearing account, the holder shall submit to the Department of the Treasury the following reports: a statement on the interest-bearing account holding unclaimed property. The statement shall:

1. Be the kind normally issued on an interest-bearing account;
2. Be filed with the Department of the Treasury on an annual basis; and
3. Include the value of the unclaimed property and the amount of the interest paid on the account.

Section 3. Reports on an Amount Paid Out of an Account Holding Unclaimed Property. (1) A holder of an account holding unclaimed property shall file a report within ten (10) business days of paying an amount out of the account.

2. The report shall include:
   (a) The name, Social Security number, and the address of the property owner;
   (b) The amount paid;
   (c) The portion of the amount that represents interest paid and the portion that represents the original amount of unclaimed property;
   (d) The date the property was presumed abandoned;
   (e) Proof of payment;
   (f) An itemization of each fee or expense charged against the account; and
   (g) An affidavit indicating:

1. What specific proof was used in determining that the person that received the amount or payment was the rightful claimant; and
2. That the procedures for paying a claim for unclaimed property as established in 20 KAR 1.040 were followed.

3. The report shall be filed at the Department of the Treasury.


(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of the Treasury, 1050 U.S. Hwy. 127 South, Suite 100, Capitol Annex, Room 168, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

JONATHAN MILLER, Kentucky State Treasurer
APPROVED BY AGENCY: May 22, 2006
FILED WITH LRC: May 24, 2006 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 21, 2006 at 10 a.m. ET at the Department of the Treasury, 1050 U.S. Hwy. 127 South, Suite 100, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by July 14, 2006, 5 workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until July 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: Brenda Swaett, Kentucky Department of the Treasury, 1050 U.S. Hwy. 127 South, Suite 100, Frankfort, Kentucky 40601, phone (502) 564-4722, fax (502) 564-4200.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Brenda Swaett
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation establishes the reporting requirements for a holder of unclaimed property.
(b) The necessity of this administrative regulation: The necessity of this regulation is to ensure that holders of unclaimed property are placed on notice as to the proper procedures.
(c) How this administrative regulation conforms to the content of the authorizing statutes: The Department of the Treasury is given the authority by statute to promulgate administrative regulations to enforce KRS Chapter 393. KRS 393.110(1) requires the holders of unclaimed property to submit annual reports to the Department of the Treasury concerning the property.
(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 holders of unclaimed property submit their reports to the Department of the Treasury.
(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 holders file their reports and provides more detail concerning the information to be supplied to the Department of the Treasury.
(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 holders of unclaimed property file their reports with the Department of the Treasury.
(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 for submitting the annual reports 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 holders of unclaimed property are to file their annual reports to the Department of the Treasury which will reduce
the amount of time the department’s staff spends answering basic
questions.
(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 impacts B,878 hold-
ers governed by this regulation in the Commonwealth of Kentucky.
Any business association of 2 or more individuals are required to file
unclaimed property.
(4) Provide an assessment of how the above group or groups will
be impacted by either the implementation of this administrative
regulation, if new, or by the change if it is an amendment: The
amended administrative regulation will assist interested parties in
obtaining information concerning the annual reports by clari-
FYing the procedures and required information
(5) 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.
(6) What is the source of the funding to be used for the imple-
mentation and enforcement of this administrative regulation: Un-
claimed Property Restricted Fund.
(7) Provide an assessment of whether an increase in fees or
funding will be necessary to implement this administrative regu-
lation, if new, or by the change if it is an amendment: No increase in
fees will be necessary to implement this amended regulation.
(8) State whether or not this administrative regulation estab-
ishes any fees or directly or indirectly increases any fees: This
amended administrative regulation does not directly or indirectly
increase any existing fees.
(9) TIERING: Is tiering applied? Yes, this regulation addresses
interest bearing accounts.

GENERAL GOVERNMENT
Board of Barbering
(Amendment)

201 KAR 14:150. License fees, examination fees, renewal
fees and expiration fees.

RELATES TO. KRS 317.450
STATUTORY AUTHORITY: KRS 317.440(2)
NECESSITY, FUNCTION, AND CONFORMITY: KRS
317.440(2) requires the Board of Barbering to establish fees for
licenses within the limits established by KRS 317.450. This adminis-
tration regulation establishes fees relating to barbering licenses.

Section 1. Initial licensing fees shall be as follows:
(1) Apprentice license: forty (40) dollars;
(2) Barber license: forty (40) dollars;
(3) Barber shop license: fifty (50) dollars;
(4) Barber school license: $150,
(5) Teacher of barbering license: fifty (50) dollars; and
(6) Independent contract owner: forty (40) dollars.

Section 2. Examination fees shall be as follows:
(1) Apprentice examination: $125;
(2) Barber examination: $125,
(3) Teacher of barbering examination: $125.

Section 3. Renewal fees shall be as follows:
(1) Apprentice renewal: forty (40) dollars;
(2) Barber renewal: forty (40) dollars;
(3) Teacher of barbering renewal: forty (40) dollars;
(4) Barber shop renewal: forty (40) dollars;
(5) Barber school renewal: forty (40) dollars; and
(6) Independent contract owner: forty (40) dollars.

Section 4. (1) The late fee for renewal of a license that has
been expired for more than thirty-one (31) days and not more
than five (5) years from the expiration date of last license issued by the
board shall be as follows:
(a) Apprentice late fee: twenty-five (25) dollars;
(b) Barber late fee: twenty-five (25) dollars;
(c) Teacher of barbering late fee: twenty-five (25) dollars;
(d) Barber shop late fee: twenty-five (25) dollars;
(e) Barber school late fee: twenty-five (25) dollars;
(2) The total cost of renewal of a license governed by subsec-
tion (1) of this section shall include the renewal fee and the:
(a) Late fee established by subsection (1) of this section; and
(b) Late fee defined by KRS 317.410(4174.4140)(6) [and
authorized by 1998 Ky. Acts ch. 193, sec. 20(1)].

NOEL EUGENE RECORD, Chair
APPROVED BY AGENCY: June 5, 2006
FILED WITH LRC: June 12, 2006 at noon
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A
public hearing on this administrative regulation shall be held on
July 21, 2006 at 9 a.m. (EST) at 9114 Leesgate Road, Suite 6,
Louisville, Kentucky 40222-5655. Individuals interested in being
heard at this hearing shall notify this agency in writing five 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 hearning
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 July 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: Karen Greenwell, Administrator, Board of
Barbering, 9114 Leesgate Road, Suite 6, Louisville, Kentucky
40222-5655, phone (502) 429-7148 and fax (502) 429-7149

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Karen Greenwell, Administrator
(1) Provide a brief summary of:
(a) What this administrative regulation does: This adminis-
trative regulation establishes license fees, examination fees, renewal
fees, and expiration fees.
(b) The necessity of this administrative regulation: This admin-
istrative regulation is necessary to implement provisions of KRS
Chapter 317.440(2).
(c) How this administrative regulation conforms to the content of
the authorizing statutes: It establish fees for licenses within the
limits established by KRS 317.450.
(d) How this administrative regulation currently assists or will
assist in the effective administration of the statutes: It establishes
fees for licenses within the limits established by KRS 317.450.
(2) If this is an amendment to an existing administrative regu-
lation, provide a brief summary of:
(a) How the amendment will change this existing administrative
regulation: This amendment will establish the fees for the inde-
pendent contract owner's initial license, license renewal, and the
late fee for renewal.
(b) The necessity of the amendment to this administrative
regulation: This amendment is necessary to establish the fees for the
independent contract owner below the limits established by KRS
317.450.
(c) How the amendment conforms to the content of the authorizing
statutes: The board is authorized to set the fees within the
limits established by KRS 317.450.
(d) How the amendment will assist in the effective administra-
tion of the statutes: By establishing the license fees for the initial
license, license renewal, and expiration fees.
(e) List the type and number of individuals, businesses, organi-
zations, or state and local governments affected by this adminis-
trative regulation: Approximately 2,000 licensed barbers who, ac-
cording to KRS 317.596, will be licensed as independent contract
owners.
(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 license fees for independent contract owners will be in line with all other licenses and lower than the amount set in KRS 317.450.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) There will be no cost to the state. Initially, the cost to the agency will be approximately $2,500 including postage for informational memo, printing of license and envelopes and postage to mail license.
(b) On a continuing basis: There will be no cost to the state on a continuing basis. The cost to the agency will be approximately $800 on a continuing basis. This cost includes, printing of license, envelopes and postage.
(c) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Agency Revenue Fund.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation establishes a new fee for the independent contract owner but will not increase any fees either directly or indirectly.

(9) Tiersing: Is tiering applied? All licensees will be treated the same so tiering is not appropriate.

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department for Environmental Protection
Division of Air Quality
(Amendment)

401 KAR 50:010. Definitions for 401 KAR Chapter 50.

RELATES TO: KRS 224.01-010, 224.20-100, 224.20-110, 224.20-120, 40 C.F.R. Chapter I, Appendices A-K-50, 51.100(e), 53, 61, Appendices A and B-60, Appendix B-61, 42 U.S.C. 7410, 7411(f)(6).

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100 requires the [Natural Resources and Environmental and Public Protection Cabinet to promulgate [herein] administrative regulations for the prevention, abatement, and control of air pollution. This administrative regulation defines the terms used in 401 KAR Chapter 50. The definitions contained in this administrative regulation [which have corresponding federal definitions] are neither [not] more stringent nor otherwise different than the corresponding federal definitions.

Section 1. Definitions. (1) "Affected facility" means an apparatus, building, operation, road, or other entity or series of entities that [which] emits or may emit an air contaminant into the outdoor atmosphere.

(2) "Air contaminant" is defined in KRS 224.01-010.

(3) "Air pollutant" means an air contaminant.

(4) "Air pollution" is defined in KRS 224.01-010.

(5) "Air pollution control equipment" means a mechanism, device or contrivance used to control or prevent air pollution, that [which] is not, aside from air pollution control laws and administrative regulations, vital to production of the normal product of the source or to its normal operation.

(6) "Alteration" means:
(a) The installation or replacement of air pollution control equipment at a source; or
(b) A physical change in or change in the method of operation of an affected facility that [which] increases the potential to emit a pollutant (to which a standard applies) emitted by the facility or which results in the emission of an air pollutant (to which a standard applies) not previously emitted.

(7) "Alternative method" means a method of sampling and analyzing for an air pollutant that [which] is not a reference method or equivalent method and [but which] has been demonstrated to the cabinet's and the U.S. EPA's satisfaction to produce adequate results for its determination of compliance.

(8) "Ambient air quality standard" means the portion of the atmosphere, external to buildings, to which the general public has access.

(9) "Ambient quality standard" means a numerical expression of a specified concentration level for a particular air contaminant and the time averaging interval over which that concentration level is measured and is a goal to be achieved in a stated time through the application of appropriate preventive or control measures.

(10) "AOAC" means Association of Official Analytical Chemists.

(11) "ANSI" means American National Standards Institute.

(12) "ASTM" means American Society for Testing and Materials.

(13) "BOD" means biochemical oxidant demand.

(14) "Btu" means British Thermal Unit.

(15) "C" means degree Celsius (centigrade).

(16) "Cabinet" is defined in KRS 224.01-010.

(17) "Cal" means calorie.

(18) "Capital expenditure" is defined in 40 C.F.R. 60.2, [means an expenditure for a physical or operational change to an affected facility that:]
(a) Exceeds the product of:

- The applicable "annual asset guideline, repair, allowance percentage" specified in the Internal Revenue Service (IRS) Publication 534; and
- The affected facility's basis, as defined by 26 U.S.C. 1012, and
(b) Is not reduced by an excluded-addition as defined in IRS Publication 534.

(19) "Capture" means the containment or recovery of emissions from a process for direction into a duct that [which] may be exhausted through a stack or sent to a control device.

(20) "Capture system" means all equipment including hoods, ducts, fans, booths, and smokers that contain, collect, and transport an air pollutant to a control device.

(21) "Capture efficiency" means the weight per unit time of volatile organic compounds (VOCs) entering a capture system and delivered to a control device divided by the weight per unit time of total VOCs generated by a source of VOCs, expressed [expressed] as a percentage.

(22) "cfm" means cubic feet per minute.

(23) "CH4" means methane.

(24) "CO" means carbon monoxide.

(25) "CO2" means carbon dioxide.

(26) "COD" means chemical oxidant demand.

(27) "Commence" means that an owner or operator has undertaken a continuous program of construction, modification, or reconstruction of an affected facility, or that an owner or operator has entered into a contractual obligation to undertake and complete, within a reasonable time, a continuous program of construction, modification, or reconstruction of an affected facility.

(28) "Compliance schedule" means a time schedule of remedial measures including an enforceable sequence of actions or operations leading to compliance with a limitation or standard.

(29) "Construction" means fabrication, erection, installation or modification of an air contaminant source.

(30) "Continuous monitoring system" means the total equipment, required under the applicable administrative regulations used to sample, to condition (if applicable), to analyze and to provide a permanent record of emissions or process parameters.

(31) "Control device" means equipment such as an incinerator or carbon adsorber used to reduce, by destruction or removal, the amount of air pollutants in an air stream prior to discharge to the ambient air.

(32) "Control system" means a combination of one (1) or more capture systems and control devices working in concert to reduce discharges of pollutants to the ambient air.

(33) "Destruction or removal efficiency" means the efficiency, expressed as a decimal fraction, of a control device in destroying
or removing contaminants that is calculated as above (1) minus the quotient of the amount of VOCs exiting the control device divided by the amount of VOCs entering the control device, i.e. 1-(VOC exiting)/(VOC entering)).

(34) "Director" means Director of the Division for Air Quality of the [Natural Resource and] Environmental and Public Protection Cabinet.

(35) "District" is defined in KRS 224.01-010.

(36) "dec" means dry cubic feet at standard conditions.

(37) "dsm" means dry cubic meter at standard conditions.

(38) "Emission standard" means that numerical limit that [which] fixes the amount of an air contaminant or air contaminants that may be vented into the atmosphere from an affected facility or from air pollution control equipment installed in an affected facility.

(39) "Equivalent method" means a method of sampling and analyzing for an air pollutant that [which] has been demonstrated to the cabinet's and the U.S. EPA's satisfaction to have a consistent and quantitatively known relationship to the reference method, under specified conditions.

(40) "Exempt compound" or "exempt solvent" means an organic compound listed in the definition of volatile organic compound that is not participating in atmospheric photochemical reactions.

(41) " Existing source" means a source that [which] is not a new source.

(42) "Extreme nonattainment county" or " extreme nonattainment area" means a county or portion of a county designated extreme nonattainment in 401 KAR 51:010.

(43) "F" means degree Fahrenheit.

(44) "Fixed capital cost" means the capital needed to provide all the depreciable components.

(45) "ft" means feet.

(46) "Fuel" means natural gas, petroleum, coal, wood, or a form of solid, liquid, or gaseous fuel derived from these materials for the purpose of creating useful heat.

(47) "Fugitive emissions" means those emissions that [which] would not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

(48) "g" means gram.

(49) "gal" means gallon.

(50) "Gas-gas method" means a method used to determine the capture of emissions that rely solely on gas phase measurements that either:

(a) Requires construction of a total temporary enclosure to assure all [would-be] fugitive emissions are measured; or

(b) Uses the room or building that [which] houses the emission source as an enclosure.

(51) "gr" means grain.

(52) "HCL" means hydrochloric acid.

(53) "Hg" means mercury.

(54) "HF" means hydrogen fluoride.

(55) "Hood" means a partial enclosure or canopy for capturing and exhausting, by means of a draft, the organic vapors or other fumes rising from a coating process or other source.

(56) "hr" means hour.

(57) "Hydrocarbons" means an organic compound consisting predominantly of carbon and hydrogen.

(58) "H_2O" means water.

(59) "H_2S" means hydrogen sulfide.

(60) "H_2SO_4" means sulfuric acid.

(61) "in" means inch.

(62) "Incineration" means the process of igniting and burning solid, semisolid, liquid, or gaseous combustible wastes.

(63) "Intermittent emissions" means emissions of particulate matter into the open air from a process that [which] operates for less than any six (6) consecutive minutes.

(64) "J" means joule.

(65) "Kg" means kilogram.

(66) "L" means liter.

(67) "lb" means pound.

(68) "Liquid-gas method" means a method used to determine the capture of emissions that require both gas phase and liquid phase measurements and analysis that either:

(a) Requires construction of a temporary enclosure; or

(b) Uses the building or room that [which] houses the facility as an enclosure.

(69) "m" means meter.

(70) "m_2" means cubic meter.

(71) "Major source" means a source with a [of-which-the] potential emission rate is equal to or greater than 100 tons per year of any one (1) of the following pollutants: particulate matter, sulfur oxides, nitrogen oxides, volatile organic compounds or carbon monoxide.

(72) "Malfunction" means a failure of air pollution control equipment, process equipment, or a process to operate in a normal or usual manner that is not caused entirely or in part by poor maintenance, careless operation, or other preventable upset condition or preventable equipment breakdown.

(73) "Marginal nonattainment county" or " marginal nonattainment area" means a county or portion of a county designated marginal nonattainment in 401 KAR 51:010.

(74) "mg" means microgram [milli-mg = milligram].

(75) "mg" means milligram.

(76) "min" means minute.

(77) [KWH] "KWh" means megajoules.

(78) "MM^3" means cubic meter.

(79) "mm" means millimeter.

(80) "MM" means millon.

(81) [KWH] "MWh" means megawatts.

(82) [KWH] "Wh" means watt.

(83) [KWH] "kgm" means kilogram.

(84) "km" means kilometer.

(a) Increases the amount of an air pollutant (to which a standard applies) emitted into the atmosphere by that facility or that [which] results in the emission of an air pollutant (to which a standard applies) into the atmosphere not previously emitted; and

(b) Is not solely:

1. Maintenance, repair, and replacement that [which] the cabinet determines to be routine for a source category;

2. An increase in production rate of an affected facility, if that increase can be accomplished without a capital expenditure on that facility;

3. An increase in the hours of operation;

4. Use of an alternative fuel or raw material if, prior to the date a standard becomes applicable to that source type, the affected facility was designed to accommodate that alternative use. A facility shall be considered to be designed to accommodate an alternative fuel or raw material if that use could be accomplished under the facility's construction specifications as amended prior to the change.

5. Conversion to coal required for energy considerations, as specified in 42 U.S.C. 7411(e)(8);

6. The addition or use of a system or device the primary function of which [whose primary function] is the reduction of air pollutants, except if an emission control system is removed or is replaced by a system that [which] the cabinet determines to be less environmentally beneficial; or

7. The relocation or change in ownership of an existing facility.

(86) [KWH] "Monitoring device" means the total equipment, required in applicable administrative regulations, used to measure and record, if applicable, process parameters.

(87) [KWH] "New source" means a source, the construction, reconstruction, or modification of which commenced on or after the classification date as defined in the applicable administrative regulation irrespective of a change in emission rate.

(88) [KWH] "Ng" means nanograms.

(89) [KWH] "N_2" means nitrogen.

(90) [KWH] "N_2O" means nitrogen dioxide.

(91) [KWH] "O_2" means oxygen.

(92) [KWH] "O_3" means ozone.

(93) [KWH] "Opacity" means the degree to which emissions
reduce the transmission of light and obscure the view of an object in the background.

(94) [469] "Overall emission reduction efficiency" means:
(a) The weight per unit time of VOC removed by a control device divided by the weight per unit time of VOC emitted by an emission source, expressed as a percentage; and
(b) The product of the capture efficiency and the control equipment destruction or removal efficiency, with the efficiencies expressed as decimal fractions.

(95) [464] "Owner or operator" means a person who owns, leases, operates, controls, or supervises an affected facility or a source to which an affected facility is a part.

(96) [463] "oz" means ounce.

(97) [463] "Particulate matter" means a material, except uncombined water, which exists in a finely divided form as a liquid or a solid as measured by the appropriate approved test method.

(98) [463] "Particulate matter emissions" means, except as used in 40 C.F.R. Part 60, all finely divided solid or liquid material, other than uncombined water, emitted to the ambient air as measured by applicable reference methods, or an equivalent or alternative method specified in 40 C.F.R. Chapter I, or by a test method specified in the approved state implementation plan.

(99) [463] "Person" means an individual, private or public corporation, political subdivision, government agency, municipality, industry, copartner, association, firm, trust, estate, or other entity.

(100) [463] "PM2.5" means particulate matter with an aerodynamic diameter less than or equal to a non-totem-and-a-half (2.5) micrometers as measured by a reference method in 40 C.F.R. Part 50, Appendix L, and designated in accordance with 40 C.F.R. Part 3, or by an equivalent method designated in accordance with 40 C.F.R. Part 53.


(102) [463] "PMo emissions" means finely divided solid or liquid material, with an aerodynamic diameter less than or equal to a non-totem (10) micrometers emitted to the ambient air as measured by an applicable reference method, or an equivalent or alternative method, specified in 40 C.F.R. Chapter I, or by a test method specified in the approved state implementation plan.

(103) [463] "Potential to emit" or "PTE" means the maximum capacity of a stationary source to emit a pollutant under its physical and operational design, and [which] shall:
(a) Include air pollution control equipment and restrictions on the type of operation or type of activity or the nature or amount of material combusted, stored, or processed, if the limitation or its effect on emissions is federally enforceable; and
(b) Not include secondary emissions.

(104) [463] "ppb" means parts per billion.

(105) [463] "ppm" means parts per million.

(106) [463] "ppm (ppm)" means parts per million (weight by weight).

(107) [463] "ug" means microgram.

(108) [463] "psia" means pounds per square inch absolute.

(109) [463] "psig" means pounds per square inch gage.

(110) [463] "Reconstruction" means the replacement of components of an existing affected facility to the extent that:
(a) The fixed capital cost of the new components exceeds fifty (50) percent of the fixed capital cost that would be required to construct a comparable entirely new affected facility;
(b) The estimated life of the affected facility after the replacement exceeds fifty (50) percent of the life of a comparable entirely new affected facility;
(c) The components being replaced cause or contribute to the emissions from the affected facility; and
(d) It is economically and technically feasible to meet the applicable requirements of 401 KAR Chapters 50 to 65.


(112) [441] "Run" means the net period of time, either intermittent or continuous within the limits of good engineering practice, when [during which] an emission sample is collected.

(113) [442] "sec" means second.

(114) [443] "Secondary emissions" means emissions that:
(a) Occur as a result of the construction or operation of a major stationary source or major modification; and
(2) Do not come from the major stationary source or major modification itself.
(115) [444] "Serious nonattainment county" or "serious nonattainment area" means a county or portion of a county designated as nonattainment area in 401 KAR 51.010.

(116) [445] "Severe nonattainment county" or "severe nonattainment area" means a county or portion of a county designated as severe nonattainment area in 401 KAR 51.010.

(117) [446] "Shutdown" means the cessation of an operation.

(118) [447] "SO2" means sulfur dioxide.

(119) [448] "Source" means one (1) or more affected facilities contained within a given contiguous property line, which means the property is separated only by a public thoroughfare, stream, or other right of way.

(120) [449] "sq" means square.

(121) [450] "Stack or chimney" means a flue, conduit, or duct arranged to conduct emissions to the atmosphere.

(122) [451] "Standard" means an emission standard, a standard of performance, or an ambient air quality standard as promulgated in [under] the administrative regulations of the Division for Air Quality or the emission control requirements necessary to comply with 401 KAR Chapter 51F of the administrative regulations of the Division for Air Quality.

(123) [452] "Standard conditions" means:
(a) For source measurements [mean]e twenty (20) degrees Celsius (sixty-eight (68) degrees Fahrenheit) and a pressure of 760 mill Hg (29.92 inches of Hg).

(124) [453] "for [the purpose of] air quality determinations, [mean]e twenty-five (25) degrees Celsius (seventy-seven (77) degrees Fahrenheit) and a pressure of 760 mm Hg (29.92 inches of Hg).

(125) [454] "Start-up" means the setting in operation of an affected facility.

(126) [455] "State implementation plan" or "SIP" means the most recently prepared plan or revision required by 42 U.S.C. Sections 7410 and [which] has been approved by the U.S. EPA.


(128) [457] "Total suspended particulates" or "TSP" means particulate matter as measured by the method described in 40 C.F.R. Part 50, Appendix B [40 C.F.R. 50, Appendix B], and designated in accordance with 40 C.F.R. Part 53, or by an equivalent method designated in accordance with 40 C.F.R. Part 53.

(129) "TSS" means total suspended solids.

(130) "Uncombined water" means water that [which] can be separated from a compound by ordinary physical means and [which] is not bound to a compound by internal molecular forces.

(131) "Urban county" means a county that [which] is a part of an urbanized area with an estimated population of more than 200,000 based upon the 1980 census. If a portion of a county is a part of an urbanized area, then the entire county shall be classified as urban with respect to the administrative regulations of the Division for Air Quality.

(132) "Urbanized area" means an area defined [as such] by the
U.S. Department of Commerce, Bureau of Census. 
(133) "U.S. EPA" means United States Environmental Protection Agency. 
(134) "UTM" means Universal Transverse Mercator. 
(135) "VOC" or "VOCs" means volatile organic compounds.

VOLUME 33, NUMBER 1 — JULY 1, 2006

JOHN W. CLAY, Deputy Secretary
For LAUANA S. WILCHER, Secretary
APPROVED BY AGENCY: June 14, 2006
FILED WITH LRC: JUNE 15, 2006 at 8 a.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD.

A public hearing on this administrative regulation shall be held on July 26, 2006 at 10 a.m. in the Conference Room of the Division for Air Quality at 803 Schenkel Lane, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing five workdays prior to the hearing, of their intent to attend. This hearing is open to the public. Any person who wishes to be heard will be granted an opportunity to comment on the proposed administrative regulation. If you do not wish to be heard at the hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until July 31, 2006. Send written notification of intent to be heard at the hearing or written comments on the proposed administrative regulation to the contact person, hearing facility is accessible to persons with disabilities. Requests for reasonable accommodations, including auxiliary aids and services necessary to participate in the hearing, may be made to the contact person at least five (5) workdays prior to the hearing.

CONTACT PERSON: Chris Hall, Environmental Technologist I, Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky 40601, phone (502) 573-3382, fax (502) 573-3787.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Chris Hall
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation defines terms used in the Kentucky administrative regulations contained in 40 KAR Chapter 13A and 40 KAR Chapter 401.
(b) The necessity of this administrative regulation: This administrative regulation defines terms used in the Kentucky administrative regulations contained in 40 KAR Chapter 401.
(c) How this administrative regulation conforms to the content of the authorizing statutes: The definitions contained in this administrative regulation have corresponding federal definitions that have been clarified and formatted to conform to KRS Chapter 13A requirements, but are not more stringent or otherwise different than the corresponding federal definitions.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation defines terms used in the Kentucky administrative regulations contained in 40 KAR Chapter 401.
(e) How the amendment will change this existing administrative regulation: This amendment updates the definition of "volatile organic compound" or "VOC" to be consistent with the federal definition at 40 C.F.R. 51.100(s), amended at 69 FR 69296 (November 29, 2004) and 69 FR 69304 (November 29, 2004). The amendment makes simple changes in the text of certain definitions to conform with current KRS Chapter 13A requirements.
(f) The necessity of the amendment to this administrative regulation: This amendment is necessary in order to maintain consistency with the latest EPA regulations and to ensure Kentucky's implementation of the phase out of CFCs.
(g) How the amendment conforms to the content of the authorizing statutes: The definitions contained in this amendment that have corresponding federal definitions have been clarified and formatted to conform to KRS Chapter 13A requirements, but are not more stringent or otherwise different than the corresponding federal definitions.
(h) How the amendment will assist in the effective administration of the statutes: This amendment defines terms used in the Kentucky administrative regulations contained in 40 KAR Chapter 50.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation does not directly
(d) This definition does not include:
  1. Calculating if a significant emissions increase has occurred;
  2. Establishing a PAL under 401 KAR 51:017, Section 23.
  3. *Actuals PAL* or *PAL* means a plant-wide applicability
     limit established for a major stationary source based on the base-
     line actual emissions of all emissions units at the source that emit
     or have the potential to emit the PAL pollutant.
  4. "Adverse impact on visibility" means visibility impairment
     that interferes with the management, protection, preservation or
     enjoyment of the visitor's visual experience of the Class I area.
     This determination:
       1. Is to be made on a case-by-case basis;
       2. Considers the geographic extent, intensity, duration, fre-
          quency and time of visibility impairment and how these factors
          correlate with the times of visitor use of the Class I area; and
       3. Considers the frequency and timing of natural conditions
          that reduce visibility.
  5. "Affected facility" means an apparatus, building, operation,
     road, or other entity or series of entities that emits or may emit an
     air contaminant into the outdoor atmosphere.
  6. "Air contaminant" is defined in KRS 224.01-010(1).
  8. "Air pollution" is defined in KRS 224.01-010(3).
  9. "Air pollution control equipment" means a mechanism, de-
     vice or contrivance used to control or prevent air pollution, that
     when not, adsorbs, etc., waste from air pollution control laws and administrative
     regulations, vital to production of the normal product of the source or to its normal operation.
  10. "Allocate" or "allocation" means the determination by the
     cabinet of the number of NOx allowances to be credited to a NOx
     budget unit.
  11. "Allocation period" means each three (3) year period begin-
     ning May 1, 2004.
  12. "Allowable emissions" means:
     (a) The emissions rate of a stationary source that is calculated
         using the maximum rated capacity of the source, unless the source is
         subject to federally-enforceable limits that restrict the operating
         rate, or hours of operation, or both, and the most stringent of the
         following:
         1. The applicable standards of 40 C.F.R. Parts 60 and 61;
         2. The applicable SIP emissions limitations, including those
            with a future compliance date; or
         3. The emissions rates specified as a federally-enforceable
            permit condition, including those with a future compliance date;
         (b) For an actuals PAL, the emissions rate of a stationary
             source that is calculated considering any emission limitations that
             are enforceable as a practical matter on the emissions unit's
             potential to emit, and the most stringent provision of paragraph (a)1
             to 3 of this subsection.
  13. "Alteration" means:
     (a) The installation or replacement of air pollution control
         equipment at a source; or
     (b) A physical change in or change in the method of operation
         of an affected facility that increases the potential to emit a pollut-
         ant, to which a standard applies, emitted by the facility or that re-
         sults in the emission of an air pollutant (to which a standard ap-
         plies) not previously emitted.
  14. "Alternative method" means a method of sampling and
     analyzing for an air pollutant that is not a reference method or
     equivalent method and [but which has been demonstrated to the
     cabinet's and the U.S. EPA's satisfaction to produce adequate results for its determination of
     compliance.
  15. "Ambient air* means that portion of the atmosphere, ex-
     ternal to buildings, to which the general public has access.
  16. "Ambient air quality standard* means a numerical expres-
     sion of a specified concentration level for a particular air contamin-
     ant and the time averaging interval over which that concentration
     level is measured and is a goal to be achieved in a stated time
     through the application of appropriate preventive or control meas-
     ures.
  18. "AOAC* means Association of Official Analytical Chem-

(19) "ASTM" means American Society for Testing and Materials.

(20) "Baseline actual emissions" means the rate of emissions, in tons per year, of a regulated NSR pollutant, that:
(a) For an existing electric utility steam generating unit (EUSGU), the unit actually emitted during any consecutive twenty-four (24) month period selected by the owner or operator within the five (5) year period immediately preceding the date the owner or operator begins actual construction of the project.
1. The rate is an average that:
   a. Includes fugitive emissions, to the extent quantifiable, and emissions associated with startups, shutdowns, and malfunctions;
   b. Is adjusted downward to exclude any noncompliant emissions that occurred while the source was operating above an emission limitation that was legally enforceable during the consecutive twenty-four (24) month period, and
   c. Is based on any consecutive twenty-four (24) month period for which there is adequate information for determining annual emissions, in tons per year, and for adjusting this amount as necessary according to clause (b) of this subparagraph;

2. Use of a time period other than the twenty-four (24) month period is allowed, if the cabinet determines that a different time period is more representative of normal source operation; and

3. If a project involves multiple emissions units, only one (1) consecutive twenty-four (24) month period is used to determine the baseline actual emissions for the emissions units being changed, where a different consecutive twenty-four (24) month period is allowed for each regulated NSR pollutant for each existing emissions unit that is not an EUSGU, the unit actually emitted during any consecutive twenty-four (24) month period selected by the owner or operator within the ten (10) year period beginning on or after November 15, 1990, and immediately preceding the earlier of the date the owner or operator begins actual construction of the project or the date a complete permit application is received by the cabinet for a permit required under 401 KAR 51:017 or 401 KAR 51:052.

1. The rate is an average that:
   a. Includes fugitive emissions to the extent quantifiable and emissions associated with startups, shutdowns, and malfunctions;
   b. Is adjusted downward:
      (i) To exclude any noncompliant emissions that occurred while the source was operating above an emission limitation that was legally enforceable during the consecutive twenty-four (24) month period;
      (ii) To exclude any emissions that would have exceeded an emission limitation with which the major stationary source is required to comply if the source had been required to comply with the limitations during the consecutive twenty-four (24) month period; and

3. For an emission limitation that is part of a maximum achievable control technology standard proposed or promulgated under 40 C.F.R. Part 63, only if the Commonwealth of Kentucky has taken credit for the emissions reductions in an attainment demonstration or maintenance plan consistent with 40 C.F.R. 51.165(a)(3)(i)(G); and

3. Is based on any consecutive twenty-four (24) month period for which there is adequate information for determining annual emissions, in tons per year, and for adjusting this amount as necessary according to clause (b) of this subparagraph; and

2. If a project involves multiple emissions units, only one (1) consecutive twenty-four (24) month period is used to determine the baseline actual emissions for the emissions units being changed, however, a different consecutive twenty-four (24) month period is allowed for each regulated NSR pollutant.

(c) For a new emissions unit, equals zero for determining the emissions increase that will result from the initial construction and operation of the new unit and thereafter, for all other purposes, equals the unit's potential to emit.

(d) For a PAL for a stationary source, is determined as follows:
1. For an existing EUSGU, in accordance with the procedures contained in paragraph (a) of this subsection;

2. For other existing emissions units, in accordance with the procedures contained in paragraph (b) of this subsection; and

3. For a new emissions unit, in accordance with the procedures contained in paragraph (c) of this subsection.

(21) "Baseline area" means an intrastate area, and every part of that area, designated as attainment or unclassifiable pursuant to 42 U.S.C. 7407 (d)(1)(A)(i) or (ii) in which the major source or major modification establishing the minor source baseline date would construct or would have an air quality impact equal to or greater than one (1) µg/m³ annual average of the pollutant for which the minor source baseline date is established.

(a) Area redesignations under 42 U.S.C. 7407 (d)(1)(A)(i) or (ii) cannot intersect or be smaller than the area of impact of a major stationary source or major modification that:
1. Establishes a minor source baseline date; or
2. Is subject to 401 KAR 51:017 and would be constructed in the Commonwealth of Kentucky.

(b) A baseline area established originally for total suspended particulate (TSP) increments remains in effect to determine the amount of available PM10 increments, unless the cabinet rescinds the corresponding minor source baseline date.

(22) "Baseline concentration" means the ambient concentration level that exists in the baseline area on the date the applicable minor source baseline date is established.

(a) A baseline concentration is determined for each pollutant for which a minor source baseline date is established and includes:
1. The actual emissions representative of sources in existence on the applicable minor source baseline dates, except as provided in paragraph (b) of the subsection; and

2. The allowable emissions of major stationary sources that commenced construction prior to the minor source baseline date but were not in operation by the applicable minor source baseline date.

(b) The following are not included in the baseline concentration and thus affect the maximum applicable allowance increase:
1. Actual emissions at a major source, that which result from construction commencing after the major source baseline date; and

2. Actual emissions increases and decreases at a stationary source occurring after the minor source baseline date.

(23) "Baseline date" means major source baseline date or minor source baseline date and is established for each pollutant for which increments or other equivalent measures have been established if the area in which the proposed source or modification would construct is designated as attainment or unclassifiable pursuant to 42 U.S.C. 7407(d)(1)(A)(i) or (ii) or for the pollutant on the date of the source's complete application; and

(a) For a major stationary source, the pollutant would be emitted in significant amounts; or

(b) For a major modification, there would be a significant net increase in the pollutant.

(24) "Begun actual construction" means:
(a) Initiation of physical on-site construction activities on an emissions unit that are of a permanent nature and include installation of building supports and foundations, laying underground pipe work, and construction of permanent storage structures.
(b) For a change in method of operations, those on-site activities other than the preparatory activities, that which mark the initiation of the change.

(25) "Best available control technology" or "BACT" means an emissions limitation, including a visible emission standard, based on the maximum degree of reduction for each regulated NSR pollutant that will be emitted from a proposed major stationary source or major modification that:
(a) Is determined by the cabinet on a case-by-case basis after taking into account energy, environmental, and economic impacts and other costs, to be achievable by the source or modification through application of production processes or available methods, systems, and techniques, including fuel cleaning or treatment or innovative fuel combustion techniques for control of that pollutant;
(b) Does not result in emissions of a pollutant that would exceed the emissions allowed by an applicable standard of 40 C.F.R. Parts 60 and 61; and

(c) Is satisfied by a design, equipment, work practice, or operations standard or combination of standards approved by the cabinet.

1. The cabinet determines technological or economic limita-
tions on the application of measurement methodology to a particular emissions unit would make the imposition of an emissions standard infeasible.

2. The standard establishes the emissions reduction achievable by implementation of the design, equipment, work practice or operation; and

3. The standard provides for compliance by means that achieve equivalent results.

(26) "BOD" means biochemical oxidant demand.

(27) "Boiler" means an enclosed fossil or other fuel-fired combustion device used to produce heat and to transfer heat to recirculating water, steam, or other medium.

(28) "BTU" means British thermal unit.

(29) "Building, structure, facility, or installation" means all of the pollutant emitting activities that:
   (a) Belong to the same industrial grouping, or have the same two (2) digit major group code, as described in the Standard Industrial Classification Manual, 1987;
   (b) Are located on one (1) or more contiguous or adjacent properties;
   (c) Are under the control of the same person or persons under common control; and
   (d) Do not include the activities of a vessel.

(30) "C" means degree Celsius (centigrade).

(31) "Cabinet" is defined in KRS 224.01-010(9).

(32) "Cal" means calorie.

(33) "Capital expenditure" is defined in 40 C.F.R. 60.2, [means an expenditure for a physical or operational change to an affected facility that]
   (a) Exceeds the product of
   1. The applicable annual asset guidelines; repair allowance percentage specified in the Internal Revenue Service (IRS) Publication 544; and
   2. The affected facility's basis, as defined by 26 U.S.C. 1012; and
   (b) Is not reduced by an excluded addition as defined in IRS Publication 544.

(34) "cft" means cubic feet per minute.

(35) "CH4" means methane.

(36) "Clean coal technology" means a technology, including technologies applied at the precombustion, combustion, or postcombustion stage, at a new or existing facility that will achieve significant reductions in air emissions of sulfur dioxide or oxides of nitrogen associated with the utilization of coal in the generation of electricity or process steam that was not in widespread use as of November 15, 1990.

(37) "Clean coal technology demonstration project" means a commercial demonstration of clean coal technology, with a federal contribution of at least twenty (20) percent of the total cost of the project and funding appropriated as follows:
   (a) Under the heading "Department of Energy-Clean Coal Technology," up to a total amount of $2,500,000,000; or
   (b) To the U.S. EPA for a similar project.

(38) "Clean unit" means an emissions unit that:
   (a) Has been issued a major NSR permit that requires compliance with BACT or LAER; is complying with the applicable BACT or LAER requirements; and qualifies as a clean unit pursuant to 401 KAR 51:017, Section 20 or 401 KAR 51:052, Section 11; or
   (b) Has been designated by the cabinet as a clean unit, based on the criteria in 401 KAR 51:017, Section 21(2) or 401 KAR 51:052, Section 12(2), using a SIP approved permitting process; or
   (c) Has been designated as a clean unit by the U.S. EPA in accordance with 40 C.F.R. 52.21(y)(6)(i) to (iv).

(39) "Clinker" means the product of a Portland cement kiln from which finished cement is manufactured by milling and grinding.

(40) "CO" means carbon dioxide.

(41) "CO2" means carbon dioxide.

(42) "COD" means chemical oxidant demand.

(43) "Collateral pollutant" means an air contaminant for which the emissions rate is increased as a result of undertaking a pollution control project.

(44) "Combined cycle system" means a system comprised of one (1) or more combustion turbines, heat recovery steam generators, or steam turbines configured to improve overall efficiency of electricity generation or steam production.

(45) "Combustion turbine" means an enclosed fossil or other fuel-fired device that is composed of a compressor, a combustor, and a turbine, and in which the flue gas results from the combustion of fuel in the combustor passes through the turbine, rotating the turbine.

(46) "Commission" means that an owner or operator:
   (a) Has undertaken a continuous program of construction, modification, or reconstruction of an affected facility; or that an owner or operator has entered into a contractual obligation to undertake and complete, within a reasonable time, a continuous program of construction, modification, or reconstruction of an affected facility; or
   (b) For construction of a major stationary source or major modification in the PSD or NSR program, has all necessary preconstruction approvals or permits, and:
   1. Has begun, or caused to begin, a continuous program of actual on-site construction of the source, to be completed within a reasonable time, or
   2. Has entered into binding agreements or contractual obligations, that (which) cannot be cancelled or modified without substantial loss to the owner or operator, to undertake a program of actual construction of the source to be completed within a reasonable time.

(47) "Commence commercial operation" means to have begun to produce steam, gas, or other heated medium used to generate electricity for sale or use. Except as provided in 401 KAR 51:195 or 40 C.F.R. 96.5:
   (a) For a unit that is a NOx budget unit under 40 C.F.R. 96.4, on the date the unit commences commercial operation, the date remains the unit's date of commencement of commercial operation even if the unit is subsequently modified, reconstructed, or repowered.
   (b) For a unit that is not a NOx budget unit under 40 C.F.R. 96.4, on the date the unit commences commercial operation, the date the unit becomes a NOx budget unit under 40 C.F.R. 96.4 is the unit's date of commencement of commercial operation.

(48) "Commission operation" means, for a NOx budget unit, to have begun a mechanical, chemical, or electronic process, including start-up of a unit's combustion chamber. Except as provided in 401 KAR 51:195 or 40 C.F.R. 96.5:
   (a) For a unit that is a NOx budget unit under 40 C.F.R. 96.4 on the date of commencement of operation, the date remains the unit's date of commencement of operation even if the unit is subsequently modified, reconstructed, or repowered.
   (b) For a unit that is not a NOx budget unit under 40 C.F.R. 96.4 on the date of commencement of operation, the date the unit becomes a NOx budget unit under 40 C.F.R. 96.4 is the unit's date of commencement of operation.

(49) "Complete" means, in reference to an application for a major NSR permit, that the application contains information necessary for processing the application. Designating an application complete for permit processing does not preclude the cabinet from requesting or accepting additional information.

(50) "Compliance schedule" means a time schedule of remedial measures including an enforceable sequence of actions or operators leading to compliance with a limitation or standard.

(51) "Compliance supplement pool" means the quantity of NOx allowances provided to Kentucky by the U.S. EPA to be:
   (a) Allocated to NOx budget units that achieve early reduction; or
   (b) Used to assist NOx budget sources that are unable to meet the compliance deadline as provided in 401 KAR 51:180, Section 5.

(52) "Construction" means:
   (a) Fabrication, erection, installation or modification of an air contaminant source; or
   (b) For the NSR program, any physical change or change in the method of operation, including fabrication, erection, installation, demolition, or modification of an emissions unit that would result in a change in emissions at an air contaminant source.

(53) "Continuous emissions monitoring system" or "CEMS" means all of the equipment that may be required to meet the data acquisition and availability requirements of 401 KAR 51:017 or 401
KAR 51:052 to sample, condition, (if applicable), analyze, and provide a record of emissions on a continuous basis.

(54) "Continuous emission monitoring system for NOx" or "CEMS for NOx" means the equipment required by 40 C.F.R. 96.70 to 96.76 to sample, analyze, measure, and provide, by readings taken at least once every fifteen (15) minutes of the measured parameters, a permanent record of NOx emissions, expressed in tons per hour for NOx. The following systems are necessary component parts, as required by 40 C.F.R. Part 75, included in a continuous emission monitoring system:

(a) Flow monitor;
(b) NOx pollutant concentration monitor;
(c) Diluent gas monitor (O2 or CO2) if required by 40 C.F.R. 96.70 to 96.76;
(d) Continuous moisture monitor if required by 40 C.F.R. 96.70 to 96.76; and
(e) Automated data acquisition and handling system.

(55) "Continuous emissions rate monitoring system" or "CEFRMS" means the total equipment required for the determination and recording of the pollutant mass emissions rate in terms of mass per unit of time.

(56) "Continuous monitoring system" means the total equipment, required under the applicable administrative regulations, used to sample, to condition (if applicable), to analyze and to provide a permanent record of emissions or process parameters.

(57) "Continuous parameter monitoring system" or "CPMS" means all of the equipment necessary to meet the data acquisition and control requirements of 401 KAR 51:017 and 401 KAR 51:052 to:

(a) Monitor process and control device operational parameters such as control device secondary voltages and electric currents;
(b) Monitor other information such as gas flow rate, ozone or carbon dioxide concentrations; and
(c) Record average operational parameter values on a continuous basis.

(58) "Control period" means:
(a) For the year 2004, the period beginning May 31, 2004, and ending September 30, 2004, inclusive; and
(b) For all other years, the period beginning May 1 of a year and ending September 30 of the same year, inclusive.

(59) "Director" means Director of the Division for Air Quality of the Environmental and Public Protection Cabinet.

(60) "Dist*" means defined in KRS 224.01-010(11).

(61) "dscf" means dry cubic feet at standard conditions.

(62) "dscm" means dry cubic meter at standard conditions.

(63) "Electric generating unit" means, for 401 KAR 51:160 to 401 KAR 51:195, a fossil fuel-fired boiler, combustion turbine, or a combined cycle system used to generate twenty-five (25) megawatts or more of electric power, some of which is offered for sale.

(64) "Electric utility steam generating unit" or "EUSGU" means, for the PSD and NSR programs:
(a) A steam electric generating unit that is constructed for the purpose of supplying for sale:
1. More than one-third (1/3) of its potential electric output capacity; and
2. More than twenty-five (25) megawatts electrical output to a utility power distribution system for sale; and
(b) Steam to a steam-electric generator that would produce electrical energy is also considered in determining the electrical energy output capacity of the affected facility.

(65) "Emission standard" means that numerical limit that fixes the amount of an air contaminant or air contaminants that may be vented into the atmosphere from an affected facility or from air pollution control equipment installed in an affected facility.

(66) "Emissions unit" means any part of a stationary source including an EUSGU that emits or will have the potential to emit a regulated NSR pollutant. For 401 KAR 51:017 and 401 KAR 51:052, there are two (2) types of emissions units:
(a) A new emissions unit, which is any emissions unit that is or will be newly constructed and that has existed for less than two (2) years from the date the unit first operated, and
(b) An existing emissions unit, which is any emissions unit that does not meet the requirements in paragraph (a) of this subsection or is a replacement unit.

(67) "Enforceable as a practical matter" means that the emission or other standards contained in a permit or compliance schedule include:
(a) Technically accurate emission standards, and the portions of the source that are subject to the standards;
(b) A time period adequate to demonstrate compliance with the standards; and
(c) The method the source will use to achieve and demonstrate compliance with the limitations and standards, including appropriate monitoring, recordkeeping, and reporting.

(68) "Equivalent method" means a method of sampling and analyzing for an air pollutant that has been demonstrated to the cabinet and the U.S. EPA's satisfaction to have a consistent and quantitatively known relationship to the reference method, under specified conditions.

(69) "Excess NOx emissions" means any tonnage of nitrogen oxides emitted by a NOx budget unit during a control period that exceeds the NOx budget emissions limitation for the unit.

(70) "Exempt compound" or "exempt solvent" means an organic compound listed in the definition of volatile organic compound as not participating in atmospheric photochemical reactions.

(71) "Existing source" means a source that is not a new source.

(72) "Extreme nonattainment county" or "extreme nonattainment area" means a county or portion of a county designated extreme nonattainment for the one (1) hour national ambient air quality standard for ozone in 401 KAR 51:010.

(73) "F" means deeply entrenched.

(74) "Federal land manager" means, for any lands in the United States, the secretary of the department with authority over those lands.

(75) "Federally enforceable" means all limitations and conditions that are enforceable by the U.S. EPA, including:
(a) Requirements developed under 40 C.F.R. Parts 60 and 61;
(b) Requirements in the Kentucky state implementation plan (SIP) approved by the U.S. EPA; and
(c) Any permit requirements established under 40 C.F.R. 52.21 or under regulations approved under 40 C.F.R. Part 51, Subpart I, including operating permits issued under an EPA-approved program incorporated into the SIP, that which expressly requires adherence to a permit issued under the program.

(76) "Fossil fuel" means natural gas, petroleum, coal, or a form of solid, liquid, or gaseous fuel derived from natural gas, petroleum, or coal.

(77) "Fossil fuel fired" means, for a unit:
(a) The combustion of fossil fuel, alone or in combination with another fuel, if the fossil fuel combustion comprises more than fifty (50) percent of the annual heat input on a BTU basis during a year starting in 1995 or, if a unit had no heat input starting in 1995, during the last year of operation of the unit prior to 1995;
(b) The combustion of fossil fuel, alone or in combination with another fuel, if the fossil fuel is projected to comprise more than fifty (50) percent of the annual heat input on a BTU basis during a year, and the unit is to be fossil fuel fired as of the date during the year the unit begins combusting fossil fuel.

(78) "Fixed capital cost" means the capital needed to provide all the depreciable components.
(79) "Fossil fuel" means natural gas, petroleum, coal, or a form of solid, liquid, or gaseous fuel derived from natural gas, petroleum, or coal.

(80) "fp" means feet or foot.

(81) "Fuel" means natural gas, petroleum, coal, wood, or a form of solid, liquid, or gaseous fuel derived from these materials for the purpose of creating useful heat.

(82) "Fugitive emissions" means those emissions that could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

(83) "g" means gram.

(84) "gal" means gallon.

(85) "General fund" is defined in KRS 48.010(13)(a).

(86) "Generator" means a device that produces electricity.

(87) "gr" means grain.

(88) "HCl" means hydrochloric acid.

(89) "Heat input" means the product, in MMBTU per unit of time, of the gross calorific value of the fuel, in BTU per lb, and the
fuel feed rate into a combustion device, in mass of fuel per unit of time, that:
(a) Does not include the heat derived from preheated combustion air, recirculated flue gases, or exhaust from other sources; and
(b) Is measured, recorded, and reported to the cabinet by the NOx authorized account representative in accordance with 40 C.F.R. 96.70 to 96.76.
(50) "HF" means hydrogen fluoride.
(51) "Hg" means mercury.
(52) "High terrain" means an area having an elevation of 900 feet or more above the base of the stack of a source.
(53) "hr" means hour.
(54) "Hydrocarbon" means an organic compound consisting predominantly of carbon and hydrogen.
(55) "Hydrocarbon combustion flare" means:
(a) A flare used to comply with an applicable New Source Performance Standard (NSPS) or Maximum Achievable Control Technology (MACT) standard, including uses of flares during startup, shutdown, or malfunction permitted under the standard; or
(b) A flare that serves to control emissions of waste streams comprised predominantly of hydrocarbons and containing no more than 230 µg/dscm hydrogen sulfide.
(56) "H₂O" means water.
(57) "H₂S" means hydrogen sulfide.
(58) "H₂SO₄" means sulfuric acid.
(59) "in" means inch.
(60) "Incineration" means the process of burning and volatilizing solid, liquid, or gaseous combustible wastes.
(61) "Industrial boiler or turbine" means a fossil fuel-fired boiler, combustion turbine, or a combined cycle system having a maximum design heat input of 250 MMBTU per hour or more that is not an electric generating unit.
(62) "Innovative control technology" means a system of air pollution control that has not been adequately demonstrated in practice, but will have a substantial likelihood of achieving:
(a) Greater continuous emissions reduction than any control system in current practice; or
(b) At least comparable reductions at lower cost in terms of energy, economics, or nonair quality environmental impacts.
(63) "Intermittent emissions" means emissions of particulate matter into the open air from a process that operates for less than any six (6) consecutive minutes.
(64) "J" means joule.
(65) "Kg" means kilogram.
(66) "L" means liter.
(67) "lb" means pound.
(68) "Legally enforceable" means the cabinet or the U.S. EPA has the authority to enforce a certain restriction.
(69) "Long dry kiln" means a kiln that employs no preheating of the feed and has a dry inlet feed.
(70) "Long wet kiln" means a kiln that employs no preheating of the feed and the inlet feed to the kiln is a slurry.
(71) "Low terrain" means an area other than high terrain.
(72) "Lowest achievable emissions rate" or "LAER" means, for any source, the more stringent rate of emissions based on:
(a) The most stringent emissions limitation that is contained in the Kentucky SIP for the class or category of stationary source, unless the owner or operator of the proposed stationary source demonstrates that the limitations are not achievable; or
(b) The most stringent emissions limitation that is achievable in practice by the class or category of stationary sources.
1. If this limitation is applied to a modification, this is the lowest achievable emissions rate for the new or modified emissions units at the stationary source.
2. The application of this term does not permit a proposed new or modified stationary source to emit any pollutant in excess of the amount allowed under an applicable new source standard of performance.
(73) "m" means meter.
(74) "m³" means cubic meter.
(75) "Major emissions unit" means:
(a) Any emissions unit that emits or has the potential to emit 100 tons per year or more of a PAL pollutant in an attainment area; or
(b) Any emissions unit that emits or has the potential to emit a PAL pollutant in an amount that is equal to or greater than the major source threshold for the PAL pollutant as defined by the Clean Air Act for nonattainment areas.
(116) "Major modification" means a physical change in or a change in the method of operation of a major stationary source that would result in a significant emissions increase and a significant net emissions increase of a regulated NSR pollutant.
(a) A significant emissions increase from any emissions units or net emissions increase at a major stationary source that is significant for volatile organic compounds is considered significant for ozone.
(b) A physical change or change in the method of operation does not include:
1. Routine maintenance, repair and replacement;
2. Use of alternative fuel or raw material by reason of an order or a natural gas curtailment plan in effect under a federal act;
3. Use of an alternative fuel at a steam generating unit to the extent that the fuel is generated from municipal solid waste;
4. Use of an alternative fuel or raw material by a stationary source that:
   a. The source was capable of accommodating before January 6, 1975, for 401 KAR 51.017, or December 21, 1976, for 401 KAR 51.052; unless the change would be prohibited under a federally-enforceable permit condition that was established after January 6, 1975, for 401 KAR 51.017, or December 21, 1976, for 401 KAR 51.052, pursuant to 40 C.F.R. 51.166 or 51.166.
   b. The source is approved to use under a permit issued pursuant to 401 KAR 51.017 or 401 KAR 51.052;
   5. An increase in the hours of operation or in the production rate, unless the change is prohibited under any federally-enforceable permit condition established after January 6, 1975, for 401 KAR 51.017 or December 21, 1976, for 401 KAR 51.052 pursuant to 40 C.F.R. 52.21; after June 6, 1979, pursuant to 401 KAR 51.017; after September 22, 1982, pursuant to 401 KAR 51.017; or under 401 KAR 52.020 and 401 KAR 51.016E;
   6. A change in ownership at a stationary source;
7. The addition, replacement or use of a pollution control project at an existing emissions unit meeting the requirements of 401 KAR 51.017, Section 22 or 401 KAR 51.052, Section 13, as applicable;
8. The installation, operation, cessation, or removal of a temporary clean coal technology demonstration project, if the project complies with the Kentucky SIP and other requirements necessary to attain and maintain the national ambient air quality standards during the project and after it is terminated;
9. The installation or operation of a permanent clean coal technology demonstration project that constitutes repowering. If the project does not result in an increase in the potential to emit a regulated pollutant emitted by the unit, on a pollutant-by-pollutant basis;
10. The reactivation of a very clean coal-fired electric utility steam generating unit.
(c) The definition shall not apply with respect to a particular regulated NSR pollutant when the major stationary source is complying with the requirements under 401 KAR 51.017, Section 23 and 401 KAR 51.052, Section 14 for a PAL for that pollutant. Instead, the definition at subsection (177) of this section shall apply.
(117) "Major NSR permit" means a permit issued under Kentucky's PSD or NSR program.
(118) "Major source" means a source [of an air pollutant] with a potential emission rate equal to or greater than 100 tons per year of any one (1) of the following pollutants: particulate matter, sulfur oxides, nitrogen oxides, volatile organic compounds, carbon monoxide, or ODS.
(119) "Major source baseline data" means:
(a) For particulate matter and sulfur dioxide, January 6, 1975; and
(b) For nitrogen dioxide, February 8, 1988.
(120)(a) "Major stationary source" means:
1. A stationary source of air pollutants that emits, or has the potential to emit 100 tons per year or more of a regulated NSR pollutant;
b. For the PSD program, any of the following stationary
sources of air pollutants that emits, or has the potential to emit, 100 tons per year or more of a regulated NSR pollutant; fossil fuel-fired steam electric plants of more than 250 million BTU per hour heat input, coal cleaning plants with thermal dryers, kraft pulp mills, portland cement plants, primary zinc smelters, iron and steel mill plants, primary aluminum ore reduction plants, primary copper smelters, municipal incinerators capable of charging more than 250 tons of refuse per day, hydrotreating, sulfuric, and nitric acid plants, petroleum refineries, lime plants, phosphate rock processing plants, coke oven batteries, sulfur recovery plants, carbon black plants (furnace process), primary lead smelters, fuel conversion plants, sintering plants, secondary metal production plants, chemical process plants, coal gasification plants, oil and steel mills.2: Primary aluminum ore reduction plants; 3: Primary copper smelters; 4: Municipal incinerators capable of charging more than 250 tons of refuse per day; 5: Hydrotreating, sulfuric, and nitric acid plants; 6: Coke oven batteries; 7: Sintering plants; 8: Secondary metal production plants; 9: Chemical process plants; 10: Fossil-fuel boilers, or combination of fossil-fuel boilers, totaling more than 250 million BTUs per hour heat input; 11: Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels; 12: Taconite ore processing plants; 13: Glass fiber processing plants; 14: Charcoal production plants; 15: Fossil-fuel-fired steam electric plants of more than 250 million BTUs per hour heat input; or 16: Any stationary source category that, as of August 7, 1980, is being regulated under 42 U.S.C. 7411 or 7412. (121) "Malfunction" means a sudden and infrequent failure of air pollution control equipment, process equipment, or a process to operate in a normal or usual manner that is not caused entirely or in part by poor maintenance, careless operation, or other upset condition or equipment breakdown that could have been reasonably prevented. 122) "Mandatory Class I area" means an area identified in 40 C.F.R. Part 81, Subpart D, if the administrator of the U.S. EPA, in consultation with the Secretary of the United States Department of Interior, has determined visibility to be an important value. 123) "Marginal nonattainment county" or "marginal nonattainment area" means a county or portion of a county designated marginal nonattainment for the one (1) hour national ambient air quality standard for ozone in 401 KAR 51:010. (124) "Maximum design heat input" means the ability of a unit to combust a stated maximum amount of fuel per hour on a steady state basis, as determined by the physical design and physical characteristics of the unit. 125) "Maximum potential hourly heat input" means an hourly heat input used for reporting purposes when a unit lacks certified monitors to report heat input and is: (a) A value calculated according to 40 C.F.R. Part 75 using the maximum fuel flow rate and the maximum gross calorific value, if the unit intends to use 40 C.F.R. Part 75, Appendix D to report heat input; or (b) A value reported according to 40 C.F.R. Part 75 using the maximum potential flow rate and either the maximum percent CO2 concentration (in percent CO2) or the minimum percent O2, if the unit intends to use a flow monitor and a diluent gas monitor. 126) "Maximum potential NOx emission rate" means the emission rate of NOx (in lb per MMBtu) calculated according to 40 C.F.R. Part 75, Appendix F, Section 3, using the maximum potential NOX concentration as defined in 40 C.F.R. Part 75, Appendix A, Section 2, and the maximum percent O2 or the minimum percent CO2 under all operating conditions of the unit except for unit startup, shutdown, and malfunction. (127) Maximum rated hourly heat input" means a unit specific maximum hourly heat input (MMBTU) that [which] is the higher of: 1: The manufacturer's maximum design rated hourly heat input or the highest observed hourly heat input. 128) "ug" means microgram. 129) "mg" means milligram. 130) "kilogram" is the secondary firing in kiln by injecting solid fuel at an intermediate point in the kiln using a specially designed feed injection mechanism for the purpose of decreasing NOX emissions through: (a) Blowing part of the fuel at a lower temperature; and (b) Reducing-conditions at the solid waste injection point that may destroy some of the NOx formed upstream in the kiln burning zone. 151) "[429]" "min" means minute. 152) (130)(a) "Minor source baseline date" means the earliest date after the trigger date on which a major stationary source or a major modification subject to 40 C.F.R. 52:21 or to regulations approved under 40 C.F.R. 51:16 in subpart A under the regulations. 1: For particulate matter and sulfur dioxide, the trigger date is August 7, 1977; and 2: For nitrogen dioxide, the trigger date is February 8, 1988. (130)(b) A minor source baseline data established originally for the TSP increments remains in effect to determine the amount of available PMA increments, except that the cabinet may rescind the minor source baseline date if it is shown, to the satisfaction of the cabinet, that the emissions increase from the major modification responsible for triggering that date did not result in a significant amount of PMA emissions. (c) The baseline date is established for each pollutant for which increments or other equivalent measures have been established if: 1: The area in which the proposed source or modification will construct is designated as attainment or unclassifiable pursuant to 40 U.S.C. 7407(d)(1)(A)(ii) or (iii) for the pollutant on the date of its complete application under the regulations; and 2: For a major stationary source, the pollutant will be emitted in significant amounts or a significant net emissions increase of the pollutant will occur for a major modification. [143](132) mg= means milligram. [143] (132) "mg" means microgram. [133] "Mj" means megajoules. [134] "MM" means million. [142] "Mm" means millimeter. [135] "M" means million. [136] "m" means meter. [137] "Moderate nonattainment county" or "moderate nonattainment area" means a county or portion of a county designated moderate nonattainment for the one (1) hour national ambient air quality standard for ozone in 401 KAR 51:010. [143] (132) mg= means milligram. [143] (132) "mg" means microgram. [133] "Mj" means megajoules. [134] "MM" means million. [142] "Mm" means millimeter. [135] "M" means million. [136] "m" means meter. [137] "Moderate nonattainment county" or "moderate nonattainment area" means a county or portion of a county designated moderate nonattainment for the one (1) hour national ambient air quality standard for ozone in 401 KAR 51:010. [143] (132) mg= means milligram. [143] (132) "mg" means microgram. [133] "Mj" means megajoules. [134] "MM" means million. [142] "Mm" means millimeter. [135] "M" means million. [136] "m" means meter. [137] "Moderate nonattainment county" or "moderate nonattainment area" means a county or portion of a county designated moderate nonattainment for the one (1) hour national ambient air quality standard for ozone in 401 KAR 51:010. [143] (132) mg= means milligram. [143] (132) "mg" means microgram. [133] "Mj" means megajoules. [134] "MM" means million. [142] "Mm" means millimeter. [135] "M" means million. [136] "m" means meter. [137] "Moderate nonattainment county" or "moderate nonattainment area" means a county or portion of a county designated moderate nonattainment for the one (1) hour national ambient air quality standard for ozone in 401 KAR 51:010. [143] (132) mg= means milligram. [143] (132) "mg" means microgram. [133] "Mj" means megajoules. [134] "MM" means million. [142] "Mm" means millimeter. [135] "M" means million. [136] "m" means meter. [137] "Moderate nonattainment county" or "moderate nonattainment area" means a county or portion of a county designated moderate nonattainment for the one (1) hour national ambient air quality standard for ozone in 401 KAR 51:010. [143] (132) mg= means milligram. [143] (132) "mg" means microgram. [133] "Mj" means megajoules. [134] "MM" means million. [142] "Mm" means millimeter. [135] "M" means million. [136] "m" means meter. [137] "Moderate nonattainment county" or "moderate nonattainment area" means a county or portion of a county designated moderate nonattainment for the one (1) hour national ambient air quality standard for ozone in 401 KAR 51:010.
quality standard for ozone in 401 KAR 51:010.

(138) "Modification" means any [a] physical change in, or a
change in the method of operation of, an affected facility that:
(a) Increases the amount of any [a-regulated] air pollutant [to
which a standard applies] emitted into the atmosphere by that
facility or that results in the emission of any [a-regulated] air pollut-
ant [to which a standard applies] into the atmosphere not previ-
ously emitted; and
(b) Is not solely:
1. Maintenance, repair, or replacement that the cabinet deter-
mines to be routine for a source category;
2. An increase in production rate of an affected facility, if that
increase can be accomplished without a capital expenditure on that
facility;
3. An increase in the hours of operation;
4. Use of an alternative fuel or raw material if, prior to the date
a standard becomes applicable to that source type, the affected
facility was designed to accommodate that alternative use. A fac-
ility is considered to be designed to accommodate an alternative
fuel or raw material if that use could be accomplished under the
facility's construction specifications as amended prior to the
change;
5. Conversion to coal required for energy considerations, as
specified in 42 U.S.C. 7411(a)(8);
6. The addition or use of a system or device the primary func-
tion of which [whose primary function] is the reduction of air pollu-
ant[s], unless an emission control system is removed or [re] replaced
by a system that [which] the cabinet determines to be less envi-
ronmentally beneficial or;
7. The relocation or change in ownership of a source.

(139) Monitoring device* means the total equipment, required
in applicable administrative regulations, used to measure and rec-
ord, if applicable, process parameters.

(140) Monitoring system* means a monitoring system that
meets the requirements of 40 C.F.R. Part 96.

(141) MWe* means megawatt electrical.

(142) N- means nitrogen.

(143) Nameplate capacity* means the maximum electrical
generating output (in MWe) that a generator can sustain over a
specified period of time if not restricted by seasonal or other
deratings as measured with United States Department of Energy
standards.

(144) Natural conditions* means those naturally-occurring
phenomena that reduce visibility as measured in terms of visual
range, contrast, or coloration.

(145) Necessary preconstruction approvals or permits* means
those permits or approvals required under the administrative regu-
lations approved by the Kentucky SIP and federal air quality control
laws for the construction of a regulated source.

(146)(a) Net emissions increase* means, for any regulated
NSR pollutant emitted by a major stationary source, the amount by
which the sum of subparagraphs 1 and 2 of this paragraph ex-
ceeds zero:
1. An increase in emissions from a particular physical change
or change in method of operation at a stationary source as calcu-
lated pursuant to 401 KAR 51:017, Section 1(4) or 401 KAR
51:019, Section 1(2); and
2. Any other increases and decreases in actual emissions at
the major stationary source that are contemporaneous with the
particular change and are otherwise creditable.
(b) An increase or decrease in actual emissions is contempo-
raneous with the increase from the particular change only if:
1. For construction that commences prior to January 6, 2002,
the change occurs between the date ten (10) years before con-
struction on the change commences, and the date that the in-
crease from the change occurs; and
2. For construction that commences on and after January 6,
2002, the change occurs between the date five (5) years before
construction on the change commences, and the date that the
increase from the change occurs.
(c) An increase or decrease in actual emissions is creditable
only if:
1. The cabinet or the U.S. EPA has not relied on the change in
issuing a permit for the source pursuant to 401 KAR 51:017, 401
KAR 51:032, or 40 C.F.R. 52.21;
2. The permit is in effect at the time the increase or decrease in
actual emissions from the particular change occurs; and
3. The increase or decrease in emissions did not occur at a
clean unit, except as provided in 401 KAR 51:017, Sections 20(7)
or 21(9) or 401 KAR 51:032, Sections 1(7) or 12(8).
(d) An increase or decrease in actual emissions of sulfur diox-
ido, particulate matter, or nitrogen oxides that occurs before the
applicable minor source baseline date is creditable only if it is re-
quired to be considered in calculating the amount of maximum
allowable increases remaining available. For particulate matter,
only PM2.5 emissions are used to evaluate the net emissions in-
crease for PM2.5.
(e) An increase in actual emissions is creditable only to the
extent that the new level of actual emissions exceeds the old level.
(f) A decrease in actual emissions is creditable only to the
extent that:
1. The old level of actual emissions or the old level of allowable
emissions, whichever is lower, exceeds the new level of actual
emissions;
2. The decrease is enforceable as a practical matter at and
after the time that actual construction on the particular change
begins;
3. The decrease has approximately the same qualitative sig-
nificance for public health and welfare as that attributed to the in-
crease from the particular change; and
4. The decrease did not result from the installation of add-
carbon technology or application of pollution prevention practices
that were relied on in designating an emissions unit as a clean unit
under 40 C.F.R. 52.21(y) or under administrative regulation ap-
poved pursuant to 40 C.F.R. 51.166(u) or 51.165(d).
(g) An increase that results from a physical change at a source
occurs if the emissions unit on which construction occurred be-
comes operational and begins to emit a particular pollutant A re-
placement unit that requires shakedown becomes operational only
after a reasonable shakedown period, not to exceed 180 days.
(h) The term, actual emissions, as defined in subsection (2) of
this section does not apply in determining creditable increases and
decreases.

(147) "New source" means a source, the construction, recon-
struction, or modification of which commenced on or after the clas-
sification date as defined in the applicable administrative regula-
tion, irrespective of a change in emission rate.

(148) "Nitrogen oxides" means all oxides of nitrogen except
nitrous oxide, as measured by test methods specified by the cabi-
net.

(149) "ng" means nanograms.

(150) "NO" means nitric oxide.

(151) "NOX" means nitrogen dioxide.

(152) "Nonattainment major new source review program" or
"NSR program" means a major source preconstruction permit pro-
gram that has been approved by the U.S. EPA and incorporated
into the Kentucky SIP to implement the requirements of 40 C.F.R.
51.165 and 40 C.F.R. Part 51, Appendix S.

(153) "NOX" means nitrogen oxides.

(154) "NOX allowance" means an authorization to emit one (1)
ton of NOX during a control period under the NOX Budget Trading
Program.

(155) "NOX Allowance Tracking System (NATS)" means the
system by which the U.S. EPA records allocations, deductions, and
transfers of NOX allowances under the NOX Budget Trading Pro-
gram.

(156) "NOX authorized account representative" means the
natural person who is authorized by the owner or operator to:
(a) Represent and legally bind the owner and operator in all
matters pertaining to the NOX Budget Trading Program in ac-
cordance with 40 C.F.R. Part 96, Subpart B for a NOX budget source
and all NOX budget units at the source; and
(b) Transfer or otherwise dispose of NOX allowances held in
the general account in accordance with 40 C.F.R. Part 96, Subpart
F, for a general account.

(157) "NOX budget emissions limitation" means, for a NOX
budget unit, the tonnage equivalent of the NOX allowances avail-
ible for compliance deduction for the unit and for a control period
(a) A holder of any portion of the legal or equitable title in a NOx budget unit or in a unit for which an application for a NOx budget opt-in permit under 40 C.F.R. Part 96.83 is submitted and not denied or withdrawn;

(b) A holder of a leasehold interest in a NOx budget unit or in a unit for which an application for a NOx budget opt-in permit under 40 C.F.R. Part 96.83 is submitted and not denied or withdrawn;

(c) A purchaser of power from a NOx budget unit or from a unit for which an application for a NOx budget opt-in permit under 40 C.F.R. Part 96.83 is submitted and not denied or withdrawn under a life-of-the-unit, firm power contractual arrangement. However, unless expressly provided for in a leasehold agreement, owner does not include a passive lessor, or a person who has an equitable interest through the lessor, whose rental payments are not based upon the revenues or income from the NOx budget unit or the unit for which an application for a NOx budget opt-in permit under 40 C.F.R. Part 96.83 is submitted and not denied or withdrawn;

(d) With respect to a general account, a person who has an ownership interest with respect to NOx allowances held in the general account and who is subject to the binding agreement for the NOx authorized account representative to represent that person's ownership interest with respect to NOx allowances.

(171) "Owner or operator" means a person who owns, leases, operates, controls, or supervises an affected facility or a source to which an affected facility is a part.

(172) "OZ" means ounce.

(173) "Ozone depleting potential" or "ODP," as determined by section 40 C.F.R. Part 82, Subpart A, Appendices A and B, means the ratio of the total amount of ozone destroyed by a fixed amount of an ozone depleting substance to the amount of ozone destroyed by the same mass of trichlorofluoromethane, CFC-11; i.e., the ODP of CFC-11 equals 1.0.

(174) "Ozone depleting substance" or "ODS" means any chemical compound regulated under 40 C.F.R. Part 62 with decay products, after the photolysis of the ODS by short-wave ultraviolet light, that are able to catalyze the destruction of stratospheric ozone.

(175) "PAL effective date" means:

(a) The date of issuance of the PAL permit; or

(b) For an increased PAL, the date any emissions unit that is part of the PAL major modification becomes operational and begins to emit the PAL pollutant at a level equal to or greater than the PAL.

(176) "PAL effective period" means the period beginning with the PAL effective date and ending ten (10) years later.

(177) "PAL major modification" means any physical change in or a change in the method of operation of the PAL source that causes it to emit the PAL pollutant at a level equal to or greater than the PAL.

(178) "PAL permit" means the permit issued by the cabinet that establishes a PAL for a major stationary source.

(179) "PAL pollutant" means the pollutant for which a PAL is established at a major stationary source.

(180) "Particulate matter" means a material, except uncombined water that exists in a finely divided form as a liquid or a solid [as measured by any [the-appropriate] approved test method.

(181) "Particulate matter emissions" means, except as used in 40 C.F.R. Part 60, all finely divided solid or liquid material, other than uncombined water, emitted to the ambient air as measured by applicable reference methods, or an equivalent or alternative method specified in 40 C.F.R. Chapter I, or by a test method specified in the approved state implementation plan.

(182) "Peak load" means the maximum instantaneous operating load.

(183) "Permitted capacity factor" means the annual permitted fuel use divided by the manufacturer's specified maximum fuel consumption multiplied by 8,760 hours per year.

(184) "Person" is defined by KRS 224.01-010(17).

(185) "Plant-wide applicability limitation" or "PAL" means an emission limitation, expressed in tons per year, for a pollutant at a major stationary source, that is enforceable as a practical matter and is established source-wide in accordance with 401 KAR 51:017, Section 23 or 401 KAR 51:032, Section 14.

(186) "PM_{2.5}" means particulate matter with an aerodynamic
diameter less than or equal to a nominal two-and-a-half (2.5) micrometers as measured by a reference method in 40 C.F.R. Part 50, Appendix L, and designated in accordance with 40 C.F.R. Part 53, or by an equivalent method designated in accordance with 40 C.F.R. Part 53.

(187) "PM_{2.5}\) means particulate matter with an aerodynamic diameter less than or equal to a nominal ten (10) micrometers as measured by a reference method in [hereon] 40 C.F.R. Part 50, Appendix J and designated in accordance with 40 C.F.R. Part 53, or by an equivalent method designated in accordance with 40 C.F.R. Part 53.

(188) [(197)] "PM_{10}\) emissions" means finely divided solid or liquid material with an aerodynamic diameter less than or equal to a nominal ten (10) micrometers as measured by an applicable reference method, or an equivalent or alternative method, specified in 40 C.F.R. Chapter I, or by a test method specified in the approved state implementation plan.

(189) [(198)] "Pollution control project" or "PCP" means an activity, set of work practices, or project, including pollution prevention, undertaken at an existing emissions unit that reduces emissions of air pollutants from that unit in accordance with 401 KAR 51:917, Section 22 or 493 KAR 51:052, Section 13. Qualifying activities or projects include:

(a) Conventional or advanced flue gas desulfurization or sorbent injection for control of \(\text{SO}_2\);

(b) Electrostatic precipitators, baghouses, high efficiency multipliers, or scrubbers for control of particulate matter or other pollutants;

(c) Flue gas recirculation, low-NO\(_x\) burners or combustors, selective noncatalytic reduction, selective catalytic reduction, low emission combustion for internal combustion (IC) engines, and oxidation-absorption catalyst for control of NO\(_x\);

(d) Regenerative thermal oxidizers, catalytic oxidizers, condensers, thermal incinerators, hydrocarbon combustion flares, biofiltration, absorption, adsorption, and floating roofs for storage vessels for control of VOCs or HAPs;

(e) An activity or project to accommodate switching, or partially switching, to an inherently less polluting fuel, to be limited to the following:

1. Switching from a heavier grade of fuel oil to a lighter fuel oil, or any grade of oil to five one-hundredths \(0.05\) percent sulfur diesel;

2. Switching from coal, oil, or any solid fuel to natural gas, propane, or gasified coal;

3. Switching from coal to wood, excluding construction or demolition waste, chemical or pesticide treated wood, and other forms of unceded wood;

4. Switching from coal to #2 fuel oil with a five-tenths \(0.5\) percent maximum sulfur content; and

5. Switching from high sulfur coal to low sulfur coal with a maximum one and two-tenths \(1.2\) percent sulfur content; and

(f) Activities or projects undertaken to accommodate switching from the use of an ozone depleting substance (ODS) to the use of a substance with a lower or zero ozone depletion potential (ODP), including changes to equipment needed to accommodate an activity or project described in subparagraphs 1 and 2 of this paragraph.

1. The productive capacity of the equipment is not increased as a result of the activity or project; and

2. The projected usage of the new substance is lower, on an ODP-weighted basis, than the baseline usage of the replaced ODS, determined by:

a. Determining the ODP of the substances by consulting 40 C.F.R. Part 82, Subpart A, Appendices A and B;

b. Calculating the replaced ODP-weighted amount by multiplying the baseline actual usage, using the annualized average of any twenty-four (24) consecutive months of usage within the past ten (10) years, by the ODP of the replaced ODS;

c. Calculating the projected ODP-weighted amount by multiplying the projected annual usage of the new substance by its ODP fraction; and

d. If the value calculated in clause b of this subparagraph is more than the value calculated in clause c of this subparagraph, then the projected usage of the new substance is lower, on an ODP-weighted basis, than the baseline usage of the replaced ODS.

(190) [(199)] "Pollution prevention" means any activity that through process changes, product reformulation or redesign or substitution of less polluting raw materials, eliminates or reduces the release of air pollutants to the environment, including fugitive emissions, prior to recycling, treatment, or disposal and does not include or any other than certain in process recycling practices, energy recovery, treatment, or disposal.

(191) [(200)] "Portland cement\) means a hydraulic cement produced by pulverizing clinker consisting essentially of hydraulic calcium silicates.

(192) [(201)] "Portland cement kiln\) means a system, including solid, gaseous or liquid fuel combustion equipment, used to calcine and fuse raw materials, including limestone and clay, to produce Portland cement clinker.

(193) [(202)] "Potential to emit" or "PTE\) means:

(a) The maximum capacity of a stationary source to emit a regulated air pollutant under given its physical and operational design, where:

1. A physical or operational limitation on the capacity of a source to emit an air pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation is enforceable as a practical matter; and

2. This definition does not alter or affect the use of this term for other purposes of the Act or the term "capacity factor" as used in the Acid Rain Program.

(b) For the PSD and NSR programs, the maximum capacity of a stationary source to emit a pollutant under its physical or operational design, where:

1. A physical or operational limitation on the capacity of a source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, is treated as part of its design if the limitation or the effect it would have on emissions:

   a. Is not enforceable; or

   b. For an actuals PAL, is not enforceable or enforceable as a practical matter; and

2. Secondary emissions are not counted.

(194) [(203)] "ppb\) means parts per billion.

(195) [(204)] "ppm\) means parts per million.

(196) [(205)] "ppm Wilk\) means parts per million (weight by weight).

(197) [(206)] "Precalciner kiln\) means a kiln where the feed to the kiln system is preheated in cyclone chambers and utilizes a second burner to calcine materials in a separate vessel attached to the preheater prior to the final fusion in a kiln that forms clinker.

(198) [(207)] "Predictive emissions monitoring system\) or "PEMS\) means all of the equipment necessary to monitor process and control device operational parameters, such as control device secondary voltages and electrical currents, and other information, such as gas flow rate, ozone or carbon dioxide concentrations, and to calculate and record the mass emissions rate on a continuous basis.

(199) [(208)] "Preheater kiln\) means a kiln where the feed to the kiln system is preheated in cyclone chambers prior to the final fusion in a kiln that forms clinker.

(200) [(209)] "Prevention of Significant Deterioration Program\) or "PSD Program\) means a major source preconstruction program that has been approved by the U.S. EPA and incorporated into the Kentucky SIP to implement the requirements of 40 C.F.R. 51.166 or 52.21.

(201) [(210)] "Primary pollutant\) means a regulated NSR pollutant for which a pollution control project is undertaken to reduce emissions of that pollutant.

(202) [(211)] "Project\) means a physical change in or change in method of operation of an existing major stationary source.

(203) [(212)] "Projected actual emissions\) means:

(a) The maximum annual rate, in tons per year, at which an existing emissions unit is projected to emit a regulated NSR pollutant in any one of the five (5) years, in a twelve (12) month period, following the date the unit resumes regular operation after the project, or in any one (1) of the ten (10) years following that date, if:

1. The project involves increasing the emissions unit's design
capacity or its potential to emit the regulated NSR pollutant; and
2. Full utilization of the unit would result in a significant emis-
sions increase or a significant net emissions increase at the major
stationary source.
(b) To determine projected actual emissions, before beginning
actual construction, the owner or operator of the major stationary
source:
1. a. Considers all relevant information, including historical
operational data and the company's own representations of ex-
pected and highest projected business activity; filings with the
state and the U.S. EPA; and compliance plans under the Ken-
tucky SIP;
2. b. Includes fugitive emissions and emissions associated with
startup, shutdowns, and malfunctions; and
3. c. Excludes, in calculating any increase in emissions that re-
sults from a project, that portion of the unit's emissions following
the project that an existing unit could have accommodated during
the continuous twenty-four (24) month period used to establish
the baseline actual emissions and that are also unrelated to the
project, including any increased utilization due to product demand
growth; or
b. Elects to use the emissions unit's potential to emit, in tons
per year, instead of using subparagraph (a) of this paragraph to
determine projected actual emissions.
(2) [203j] "pelis" means pounds per square inch absolute.
(2) [203k] "pelig" means pounds per square inch gage.
(2) [203l] "RACI/BACT/ALAER Cleaninghouse" and "HAPB/LC-
co" means the online collection of previous
RACI/BACT/ALAER determinations.
(2) [203m] "Reactivation of a very clean coal-fired EUSGU"
means a physical change or change in the method of operation
associated with the commencement of commercial operations by
a coal-fired utility unit after a period of discontinued operation if the
unit:
(a) Has not been in operation for the two (2) year period be-
 tween November 15, 1998, and November 15, 1990, and the
emissions from that unit continue to be carried in the Kentucky
emissions inventory after November 15, 1990;
(b) Was equipped prior to shutdown with a continuous system
of emissions control achieving a removal efficiency for sulfur di-
oxide of no less than eighty-five (85) percent and a removal efficiency
for particulates of no less than ninety-eight (98) percent;
(c) Is equipped with low-NOx burners prior to the time of com-
mencement of operations following reactivation; and
(d) Is otherwise in compliance with the requirements of 42
U.S.C. 7401 to 7671.
(2) [203n] "Reasonable further progress" means annual
incremental reductions in emissions of the relevant air pollutant as
required by 42 U.S.C. 7401 to 7671, or may reasonably be required
by the U.S. EPA for the purpose of ensuring the attainment of the
applicable ambient air quality standard by the applicable date
specified.
(2) [203o] "Reconstruction" means the replacement of com-
ponents of an existing affected facility to the extent that:
(a) The fixed capital cost of the new components exceeds fifty
(50) percent of the fixed capital cost that would be required to con-
struct a comparable entirely new affected facility; and
(b) It is technologically and economically feasible to meet the
applicable requirements of 401 KAP Chapters 50 to 65.
(2) [203p] "Reference method" means a method of sampling
and analyzing for an air pollutant as published in [prescribed by]
or 40 C.F.R. Part 63. Appendices A to D.
(2) [203q] "Regulated NSR pollutant" means the following:
(a) A pollutant for which a national ambient air quality standard
has been promulgated and any constituents or precursors for such
pollutants identified by the U.S. EPA;
(b) A pollutant that is subject to any standard promulgated under
42 U.S.C. 7411; or
(c) A pollutant that is subject to a standard promulgated under
or established by 42 U.S.C. 7671 to 7671q; or
(d) A pollutant that otherwise is subject to regulation under 42
U.S.C. 7401 to 7671q, except that any hazardous air pollutant
(HAP) listed in 42 U.S.C. 7412 or added to the list pursuant to 42
U.S.C. 7412(b)(2) [which has not been delisted pursuant to 42
U.S.C. 7412(b)(3), is not a regulated NSR pollutant unless the
listed HAP is also regulated as a constituent or precursor of a gener-
ally pollutant listed under 42 U.S.C. 7408.
(2) [203r] "Replacement units" means an emissions unit that
does not generate creditable emissions reductions by shutting down
the existing emissions unit that is replaced, and that:
(a) I. Is a reconstructed unit within the meaning of 40 C.F.R.
60.15(b)(1) or that completely takes the place of an existing emis-
sions unit;
2. Is identical to or functionally equivalent to the replaced
emissions unit; and
3. Does not alter the basic design parameters of the process
unit.
(b) Replaces a unit that:
1. Is permanently removed from the major stationary source, is
otherwise permanently disabled, or is prohibited from operating by
a permit that is enforceable as a practical matter; and
2. If brought back into operation, is considered a new emis-
sions unit.
(2) [203s] (a) "Repowering" means:
1. Replacement of an existing coal-fired boiler with one (1) of
the following clean coal technologies: atmospheric or pressurized
fluidized bed combustion, integrated gasification combined cycle,
magneto hydrodynamics, direct and indirect coal-fired turbines,
integrated gasification fuel cells, or as determined by the U.S. EPA
in consultation with the Department of Energy; a derivative of one
(1) or more of these technologies, or another technology capable
of controlling multiple combustion emissions simultaneously with
improved boiler or generation efficiency and with significantly
greater waste reduction relative to the performance of technology
in widespread commercial use as of November 15, 1990; and
2. An oil or gas-fired unit that has been awarded clean coal
technology demonstration funding as of January 1, 1991 by the
Department of Energy.
(b) A permit application from a source that satisfies this defini-
tion shall receive expedited consideration by the cabinet and is
granted an extension under 42 U.S.C. 7651h.
(2) [203t] "Responsible official" means:
(a) For a corporation: a president, vice-president, secretary, trea-
surer, or vice-president of the corporation in charge of a principal
business function, or other person who performs similar policy or deci-
sion-making functions for the corporation, or a duly authorized re-
presentative of that person if the representative is responsible for the
overall operation of one (1) or more manufacturing, production, or
operating facilities applying for or subject to a permit; and
1. The facilities employ more than 250 persons or have gross
annual sales or expenditures exceeding $25,000,000 in second
quarter 1980 dollars; or
2. The delegation of authority to the representative is approved
in advance by the cabinet;
(b) For a partnership or sole proprietorship, a general partner
or the proprietor, respectively;
(c) For a municipality, state, federal, or other public agency, a
principal executive officer of the agency or ranking elected official. The
principal executive officer of a federal agency includes the chief executive
officer having responsibility for the overall operation of a principal
geographic unit of the agency; or
(d) For the acid rain portion of a permit for an affected source,
the designated representative.
(2) [203u] "Run" means the net period of time, either in-
termittent or continuous, within the limits of good engineering prac-
tice, when [during which] an emission sample is collected.
(2) [203v] "S" means at standard conditions.
(2) [203w] "sec" means second.
(2) [203x] "Secondary emissions" means emissions that:
(a) Occur as a result of the construction or operation of a major
stationary source or major modification, and do not come from the
major stationary source or major modification itself;
(b) Are specific, well defined, quantifiable, and impact the
same general area as the stationary source modification that
causes [caused] the secondary emissions; and
(c) Include emissions from an offsite support facility that would
not otherwise be constructed or increase its emissions as a result of the construction or operation of the major stationary source or major modification; and

(d) Do not include emissions that come directly from a mobile source, including emissions from the tailpipe of a motor vehicle, a train, or a vessel.

(221) (2218) “Serious nonattainment county” or “serious nonattainment area” means a county or portion of a county designated serious nonattainment for the one (1) hour national ambient air quality standard for ozone in 401 KAR 51:010.

(222) (2219) “Severe nonattainment county” or “severe nonattainment area” means a county or portion of a county designated severe nonattainment for the one (1) hour national ambient air quality standard for ozone in 401 KAR 51:010.

(221) (2220) “Shutdown” means the cessation of an operation.

(222) (2221) “Significant” means:

(a) For 401 KAR 51:017, in reference to a net emissions increase or the potential of a source to emit any of the pollutants listed in this following table, a rate of emissions that would equal or exceed a corresponding rate listed in the table:

<table>
<thead>
<tr>
<th>POLLUTANT</th>
<th>EMISSIONS RATE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Carbon monoxide</td>
<td>100 tons per year (tpy)</td>
</tr>
<tr>
<td>Ozone depleting substance</td>
<td>100 tpy</td>
</tr>
<tr>
<td>Nitrogen oxides</td>
<td>40 tpy</td>
</tr>
<tr>
<td>Sulfur dioxide</td>
<td>40 tpy</td>
</tr>
<tr>
<td>Particulate matter</td>
<td>25 tpy of particulate matter emissions</td>
</tr>
<tr>
<td>Ozone</td>
<td>40 tpy of volatile organic compounds</td>
</tr>
<tr>
<td>Lead</td>
<td>0 6 tpy</td>
</tr>
<tr>
<td>Fluorides</td>
<td>3 tpy</td>
</tr>
<tr>
<td>Sulfuric acid mist</td>
<td>7 tpy</td>
</tr>
<tr>
<td>Hydrogen sulfide (H2S)</td>
<td>10 tpy</td>
</tr>
<tr>
<td>Total reduced sulfur (including H2S)</td>
<td>10 tpy</td>
</tr>
<tr>
<td>Reduced sulfur compounds (including H2S)</td>
<td>10 tpy</td>
</tr>
<tr>
<td>Municipal waste combustor organics (measured as total tetra-chlorinated dibenzo-p-dioxins and dibenzofurans)</td>
<td>3.2 x 10^6 megagrams per year (Mg/yr) (3.5 x 10^6 tpy)</td>
</tr>
<tr>
<td>Municipal waste combustor metals (measured as particulate matter)</td>
<td>14 Mg/yr (15 tpy)</td>
</tr>
<tr>
<td>Municipal waste combustor acid gases (measured as sulfur dioxide and hydrogen chloride)</td>
<td>36 Mg/yr (40 tpy)</td>
</tr>
<tr>
<td>Municipal solid waste landfill emissions (measured as nonmethane organic compounds)</td>
<td>35 Mg/yr (50 tpy)</td>
</tr>
</tbody>
</table>

(b) For 401 KAR 51:017, in reference to a net emissions increase or the potential of a source to emit a regulated NSR pollutant that is not listed in the table in paragraph (a) of this subsection, any emissions rate.

(c) For 401 KAR 51:017, in reference to an emissions rate or a net emissions increase associated with a major stationary source or major modification, that (which) is to be constructed within ten (10) kilometers of a Class I area, an impact on that area equal to or greater than one (1) microgram per cubic meter over a twenty-four (24) hour average.

(d) For 401 KAR 51:052, in reference to a net emissions increase or the potential of a source to emit any of the pollutants listed in the following table, a rate of emissions that would equal or exceed a corresponding rate listed in the table:

<table>
<thead>
<tr>
<th>POLLUTANT</th>
<th>EMISSIONS RATE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Carbon monoxide</td>
<td>100 tons per year (tpy)</td>
</tr>
<tr>
<td>Ozone depleting substance</td>
<td>100 tpy</td>
</tr>
<tr>
<td>Nitrogen oxides</td>
<td>40 tpy</td>
</tr>
<tr>
<td>Sulfur dioxide</td>
<td>40 tpy</td>
</tr>
<tr>
<td>Ozone</td>
<td>40 tpy of volatile organic compounds</td>
</tr>
</tbody>
</table>

(223) (2223) “Significant emissions increase” means, for a regulated NSR pollutant, an increase in emissions that is equal to or greater than the emission level that is significant for that pollutant.

(224) (2223) “Significant emissions unit” means an emissions unit that emits or has the potential to emit a PAL pollutant in an amount that is equal to or greater than the applicable significant level as defined in subsection (221) of this section or in 42 U.S.C. 7401 to 7671q, whichever is lower for that PAL pollutant, but less than the amount that would qualify the unit as a major emissions unit.

(225) (2224) “Small emissions unit” means an emissions unit that emits or has the potential to emit the PAL pollutant in an amount less than the PAL pollutant's applicable significant level as defined in subsection (220) of this section; or in 42 U.S.C. 7401 to 7671q, whichever is lower.

(226) (2236) “SOx” means sulfur dioxide.

(227) (2236) “Source” means one (1) or more affected facilities contained within a given contiguous property line, which means the property is separated only by a public thoroughfare, stream, or other right of way.

(228) (2237) “sq” means square.

(229) (2236) “Stack or chimney” means a flue, conduit, or duct arranged to conduct emissions to the atmosphere.

(230) (2238) “Standard” means an emission standard, a standard of performance, or an ambient air quality standard as promulgated in the administrative regulations of the Division for Air Quality of [401 KAR Chapters 60 to 65, including the emission control requirements necessary to comply with 401 KAR Chapter 51.

(231) (2239) “Standard conditions” means:

(a) For source measurements, [means] twenty (20) degrees Celsius (sixty-eight (68) degrees Fahrenheit) and a pressure of 760 mm Hg (29.92 in. Hg).

(b) For [the purpose of] air quality determinations, [means] twenty-five (25) degrees Celsius (seventy-seven (77) degrees Fahrenheit) and a reference pressure of 760 mm Hg (29.92 in. of Hg).

(232) (2241) “Start-up” means the setting in operation of an affected facility.

(233) (2232) “State Implementation plan” or “SIP” means the most recently prepared plan or revision required by 42 U.S.C. 7410 that has been approved by the U.S. EPA.

(234) (2233) “Stationary source” means a building, structure, facility, or installation that emits or may emit a regulated NSR pollutant.

(235) (2234) “Submit” means to send or transmit a document, information, or correspondence in accordance with an applicable requirement.


(237) (2236) “Temporary clean coal technology demonstration project” means a clean coal technology demonstration project that is operated for a period of five (5) years or less and that complies with the Kentucky SIP and with other requirements necessary to attain and maintain the national ambient air quality standards during and after the project is terminated.

(238) (2237) “Ton” or “tonnage” means, for a NOx budget source, a short ton or 2,000 pounds. For determining compliance with the NOx budget emissions limitation, total tons for a control period is calculated as the sum of all recorded hourly emissions, or the tonnage equivalent of the recorded hourly emissions rates. In accordance with 40 C.F.R. Part 96, Subpart H with any remaining fraction of a ton equal to or greater than 0.50 ton deemed to equal one (1) ton and any fraction of a ton less than 0.50 ton deemed to equal zero tons.

(239) (2238) “Total suspended particulates” or “TSP” means particulate matter as measured by the method described in 40 C.F.R. Part 50, Appendix B.

(240) (2239) “tpy” means tons per year.

(241) (2240) “TSS” means total suspended solids.

(242) (2241) “Uncombined water” means water that can be separated from a compound by ordinary physical means and that
is not bound to a compound by internal molecular forces. (243) (2429) "Unit" means a fossil-fuel-fired stationary boiler, combustion turbine, or combined cycle system.

(244) (2429) "Urban county" means a county that is a part of an urbanized area with a population of greater than 200,000 based upon the 1980 census. If a portion of a county shall be [le] a part of an urbanized area, then the entire county is classified as urban for the administrative regulations of the Division for Air Quality.

(245) (2441) "Urbanized area" means an area defined as such by the U.S. Department of Commerce, Bureau of Census.

(246) (246) "U.S. EPA" means the United States Environmental Protection Agency.

(247) (246) "UTM" means Universal Transverse Mercator.

(248) (246) "Visibility impairment" means a humanly perceptible change in visibility such as visual range, contrast, or coloration, from that which would exist under natural conditions.

(249) (248) "Volatile organic compound" or "VOC" is defined in 40 C.F.R. 51.100(s), [means an organic compound that participates in atmospheric photochemical reactions. This includes an organic compound that is not the following compound: methanol, ethane, carbon monoxide, carbon dioxide, carbonic acid, metal carbides or carbonates, ammonium carbonate, methylene chloride, CFC-11, CFC-12, trichlorofluoromethane (CFC-11), chlorodifluoromethane (CFC-12), dichlorodifluoromethane (CHCFC-22), chlorotrifluoromethane (CFC-113), CFC-113, 1,1,2-trichloro-1,2,2,2-tetrafluoroethane (HFC-134a), 1,1-dichloro-1,2,2,2-tetrafluoromethane (HFC-134a), 1,1-difluoroethane (HFC-134b), 1,1,2,2-difluoroethane (HFC-125a).]

(250) (249) "yd" means yard.

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

(a) "Standard Industrial Classification Manual, 1987", as published by the Office of Management and Budget;

(b) "40 C.F.R. Part 82, Appendix A to Part 82 - Class I Controlled Substances, as published in the Code of Federal Regulations, July 1, 2003; and

(c) "40 C.F.R. Part 82, Appendix B to Subpart A of Part 82 - Class II Controlled Substances, as published in the Code of Federal Regulations, July 1, 2003".

(2) This material may be inspected, copied or obtained, subject to applicable copyright law, at the following main and regional offices of the Kentucky Division for Air Quality during the normal working hours of 8 a.m. to 4:30 p.m., local time:

(a) Kentucky Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky 40601-1403, (502) 573-3382;

(b) Ashland Regional Office, 1550 Wokohan Drive, Suite 1, Ashland, Kentucky 41102, (606) 929-5285;

(c) Bowling Green Regional Office, 1508 West Avenue, Bowling Green, Kentucky 42104, (270) 746-7475;

(d) Florence Regional Office, 8020 Veterans Memorial Drive, Suite 110, Florence, Kentucky 41042, (859) 525-4923;

(e) Hazard Regional Office, 230 Birch Street, Suite 2, Hazard, Kentucky 41701, (606) 435-6002;

(f) London Regional Office, 875 S. Main Street, London, Kentucky 40741, (606) 878-0157;

(g) Owensboro Regional Office, 3032 Alvey Park Drive, W., Suite 700, Owensboro, Kentucky 42303, (270) 367-7304;

(h) Paducah Regional Office, 4500 Clark's River Road, Paducah, Kentucky 42003, (270) 896-8489; and

(i) Frankfurt Regional Office, 643 Tailon Trail, Suite B, Frankfort, Kentucky 40601, (502) 584-3358.

(3) The Standard Industrial Classification Manual is also available under Order No. PB 87-100012 from the National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161, phone (703) 487-4650.


JOHN W. CLAY, Deputy Secretary
For LAJUNA S. WILCHEK, Secretary
APPROVED BY AGENCY: June 14, 2006
FILED WITH LRC: June 15, 2006 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 26, 2006 at 10 a.m. in the Conference Room of the Division for Air Quality at 803 Schenkel Lane, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing five workdays prior to the hearing, of their intent to attend. 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. If you do not wish to be heard at the hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until July 31, 2006. Send written notice of intent to be heard at the hearing, or written comments on the proposed administrative regulation to the contact person. The hearing facility is accessible to persons with disabilities. Requests for reasonable accommodations, including auxiliary aids and services necessary to participate in the hearing, may be made to the contact person at least five (5) workdays prior to the hearing.

CONTACT PERSON: Chris Hall, Environmental Technology I, Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky 40601, phone (502) 573-3382, fax (502) 573-3787.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Chris Hall
(1) Provide a brief summary of.

(a) What this administrative regulation does: This administrative regulation defines terms used in the Kentucky administrative regulations contained in 401 KAR Chapter 51.

(b) The necessity of this administrative regulation: This administrative regulation defines terms used in the Kentucky administrative regulations contained in 401 KAR Chapter 51.

(c) The administrative regulation conforms to the content of the authorizing statutes: The definitions contained in this administrative regulation that have corresponding federal definitions have been clarified and formatted to conform to KRS Chapter 13A requirements, but are not more stringent or otherwise different from the corresponding federal definitions.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation defines terms used in the Kentucky administrative regulations contained in 401 KAR Chapter 51.

(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 definition of "volatile organic compound" or "VOC" to be consistent with the federal definition at 40 C.F.R. 51.100(s) amended at 69 FR 62938 (November 29, 2004) and 69 FR 69304 (November 29, 2004). The amendment also makes simple changes in the text of certain definitions to conform with current KRS Chapter 13A requirements.
(b) The necessity of the amendment to this administrative regulation: This amendment is necessary in order for the cabinet to ensure Kentucky's State Implementation Plan (SIP) and Title V Permitting Program continue to meet the requirements of 42 U.S.C. 7401 to 7671q.
(c) How the amendment conforms to the content of the authorizing statutes: The definitions contained in this amendment have corresponding federal definitions that have been clarified and formatted to conform to KRS Chapter 13A requirements, but are not more stringent or otherwise different than the corresponding federal definitions.
(d) How the amendment will assist in the effective administration of statutes: This amendment defines terms used in the Kentucky administrative regulations contained in 401 KAR Chapter 51.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation does not directly impact any individual, business, organization, or state or local government.

(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: This administrative regulation does not directly impact any individual, business, organization, or state or local government.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: There are no known initial costs for implementation of this administrative regulation.
(b) On a continuing basis: There are no known continuing costs for 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: No funding is required.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in fees or funding will be necessary 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 any fees, nor does it directly or indirectly increase any fees.

(9) TIERING: Is tiering applied?: No. This administrative regulation imposes no requirements.

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department for Environmental Protection
Division for Air Quality
(Amendment)

401 KAR 52:001. Definitions for 401 KAR Chapter 52.

RELATES TO: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120

STATUTORY AUTHORITY: KRS 224.10-100(5)[, 224.20-100, 224.20-110, 224.20-120]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100(5) requires the [Natural Resources and] Environmental and Public Protection Cabinet to promulgate administrative regulations for the prevention, abatement, and control of air pollution. There is no federal mandate for this administrative regulation. This administrative regulation defines the terms used in 401 KAR Chapter 52. The definitions contained in this administrative regulation are neither [that have federal definitions have been clarified and simplified but are not] more stringent nor [en] otherwise different than the corresponding federal definitions.

Section 1. Definitions. (1) "Acid Rain Program" means the national program for reducing SO2 and NOx emissions established under 42 U.S.C. 7651 to 7651o (Title IV of the Act) and codified at 40 C.F.R. Parts 72 to 78.

(2) "Act" means the Clean Air Act established under 42 U.S.C. 7401 to 7475n.

(3) "Actual emissions" means the quantity of an air pollutant that is physically emitted into the ambient air during a specified time period.

(4) "Affected facility" means an apparatus, building, operation, road, or other entity or series of entities that emits or may emit an air contaminant into the outdoor atmosphere.

(5) "Affected source" means a source that includes one (1) or more affected units.

(6) "Affected states" means states that:
(a) Border Kentucky and whose air quality may be affected by the proposed permit, permit revision, or permit renewal; or
(b) Are situated within fifty (50) miles of the source requesting the proposed permit action.

(7) "Affected unit" means a unit subject to the Acid Rain Program.

(8) "Air contaminant" is defined in KRS 224.01-010(1).

(9) "Air pollutant" means air contaminant.

(10) "Air pollution" is defined in KRS 224.01-010(3).

(11) "Air pollution control equipment" means a mechanism, device or contrivance used to control or prevent air pollution, that (which) is not, aside from air pollution control laws and administrative regulations, vital to production of the normal product of the source or to its normal operation.

(12) "Alternative method" means a method of sampling and analyzing for an air pollutant that is not a reference method or equivalent method and [but which] has been demonstrated to the cabinet's and the U.S. E.P.A.'s satisfaction to produce adequate results for its determination of compliance.

(13) "Ambient air" means that portion of the atmosphere, external to buildings, to which the general public has access.

(14) "Ambient air quality standard" means a numerical expression of a specified concentration level for a particular air contaminant and the time averaging interval over which that concentration level is measured and is a goal to be achieved in a stated time through the application of appropriate preventive or control measures.

(15) "Applicable requirement" means a state-origin or federally enforceable requirement or standard that applies to a source.

(16) "Batch mix plant" means a source or affected facility that produces hot mix asphalt by heating and drying the aggregate in a dryer before separating and mixing it with asphalt cement in separate batches.

(17) "Cabinet" is defined in KRS 224.01-010.

(18) "Capital expenditure" is defined in 40 C.F.R. 60.2 [means an expenditure for a physical or operational change to an affected facility that:
(a) Exceeds the product of:
1. The applicable "annual asset guideline" repair allowance percentage[s] specified in the Internal Revenue Service (IRS) Publication 534; and
2. The affected facility's basis, as defined by 26 U.S.C. 1012; and
(b) is not reduced by an excluded addition as defined in IRS Publication 534].

(19) "Commence" means that an owner or operator has undertaken a continuous program of construction, modification, or reconstruction of an affected facility, or that an owner or operator has entered into a contractual obligation to undertake and complete, within a reasonable time, a continuous program of construction, modification, or reconstruction of an affected facility.
(20) "Construction" means fabrication, erection, installation or modification of an air contaminant source.

(21) "Continuous monitoring system" means the total equipment, required under the applicable administrative regulations used to sample, to condition (if applicable), to analyze, and to provide a permanent record of emissions or process parameters.

(22) "Control device" means equipment such as an indicator or carbon adsorber used to reduce, by destruction or removal, the amount of air pollutant in an air stream prior to discharge to the ambient air.

(23) "Control system" means a combination of one (1) or more capture systems and control devices working in concert to reduce discharges of pollutants to the ambient air.

(24) "Designated representative" means a person authorized by the owner or operator of an affected source and of all affected units at the source, as evidenced by a certificate of representation submitted to the U.S. EPA in accordance with 40 C.F.R. 72.20(b), to represent and legally bind each owner and operator, as a matter of federal law, in all matters pertaining to the Acid Rain Program. In matters relating to the acid rain portion of a Title V permit, the term "responsible official" means the designated representative.

(25) "Draft permit" means the version of a federally enforceable permit, which the cabinet offers for public review and any applicable affected state review.

(26) "Drum mix plant" means a source or affected facility that produces hot mix asphalt by heating, drying, and mixing the aggregate with asphalt cement in one (1) operation.

(27) "Emergency" means a situation arising from a sudden and reasonably unforeseeable event beyond the control of the source which:

(a) Requires immediate corrective action to restore normal operation;

(b) Causes the source to exceed a technology-based emission limitation in the permit due to unavoidable increases in emissions attributable to the emergency;

(c) Shall not include noncompliance caused by improperly designed equipment, lack of preventive maintenance, careless or improper operation, or operator error.

(28) "Emissions fee" means the annual fee assessed to a source as prescribed in 401 KAR 50:038, made effective April 12, 1995.

(29) "Emission unit" means an affected facility, or a part of activity, a source, or activity, a source, or activity, a source, or activity, a source, or activity, a source, or activity, a source, or activity.

(30) "Emission standard" means the numerical expression of quantity per unit of time or other parameter that limits the amount of a regulated air pollutant that a source or emission unit is allowed to emit to the ambient air.

(31) "Enforceable as a practical matter" means that the emission or other standards contained in a permit or compliance schedule include:

(a) Technically accurate emission standards and the portions of the source that are subject to the standards;

(b) A time period adequate to demonstrate compliance with the standards; and

(c) The method the source will use to achieve and demonstrate compliance with the standards, including appropriate monitoring, recordkeeping, and reporting.

(32) "Equivalent method" means a method of sampling and analyzing for an air pollutant, that [which] has been demonstrated to the cabinet's and the U.S. EPA's satisfaction to have a consistent and quantitatively known relationship to the reference method, under specified conditions.

(33) "Exempt compound" or "exempt solvent" means an organic compound listed in the definition of volatile organic compound as not participating in atmospheric photochemical reactions.

(34) "Federally enforceable requirement" means the items specified in this subsection as they apply to emission units at a source subject to 40 C.F.R. Part 70, including requirements that have been promulgated or approved by the U.S. EPA at the time of permit issuance but which have not been made enforceable compliance dates:

(a) Standards or requirements in the state implementation plan (SIP) that implement the relevant requirements of the Act, including revisions to that plan promulgated at 40 C.F.R. Part 52;

(b) Terms or conditions of preconstruction permits issued pursuant to administrative regulations approved or promulgated pursuant to 42 U.S.C. 7401 to 7515;

(c) A standard or other requirement promulgated pursuant to 42 U.S.C. 7411 or 4723 governing solid waste incinerators;

(d) A standard or other requirement promulgated pursuant to 42 U.S.C. 7412;

(e) Standards or requirements of the Acid Rain Program;

(f) Requirements established pursuant to 42 U.S.C. 7661c(b) or 7414(a)(3) for monitoring and compliance certification;

(g) A national ambient air quality standard or increment or visibility requirement pursuant to 42 U.S.C. 7404(a) for temporary sources permitted pursuant to 42 U.S.C. 7466a(c);

(h) A standard or other requirement for consumer and commercial products adopted pursuant to 42 U.S.C. 7511b(e);

(i) A standard or other requirement for tank vessels adopted pursuant to 42 U.S.C. 7511b(f); and

(j) A standard or other requirement to protect stratospheric ozone adopted pursuant to 42 U.S.C. 7671 to 7671q, unless the U.S. EPA determines that these requirements need not be contained in the permit.

(35) "Final permit" means:

(a) For a federally enforceable permit, the version issued by the cabinet that has completed all the applicable review procedures of 401 KAR 52:100 and for which a final determination has been made.

(b) For a state-origin permit, the version that meets the applicable provisions of 401 KAR 52:040, and for which a final determination has been made.

(36) "Fixed capital cost" means the capital needed to provide all the depreciable components.

(37) "Fuel" means natural gas, petroleum, coal, wood, or a form of solid, liquid, or gaseous fuel derived from these materials for the purpose of creating thermal heat.

(38) "Fugitive emissions" means those emissions that could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

(39) "Hazardous air pollutant" or "HAP" means a pollutant listed pursuant to 42 U.S.C. 7412(b).

(40) "Hot mix asphalt plant" means a stationary source or portable affected facility that manufactures hot mix asphalt by heating and drying aggregate and mixing it with asphalt cement.

(41) "Hydrocarbon" means an organic compound consisting predominantly of carbon and hydrogen.

(42) "Incineration" means the process of igniting and burning solid, semisolid, liquid, or gaseous combustible wastes.

(43) "Intermittent emissions" means emissions of particulate matter into the open air during a process that operates for less than any six (6) consecutive minutes.

(44) "KyEIS" means the Kentucky Emissions Inventory System.

(45) "Major source" means a stationary source or a group of stationary sources that emits or has a potential to emit at or above a major source threshold and:

(a) For HAPs:

1. Is located within a contiguous area;

2. Is under common control;

3. Includes all fugitive HAP emissions in determining if the source is major; and

4. Even if the units are in a contiguous area under common control, emissions are not aggregated with emissions from other similar units to determine major source status for:

(i) Oil or gas exploration or production wells and the associated equipment; or

(ii) Pipeline compressors or pump stations; and

(b) For regulated air pollutants other than HAPs:

1. Is located on one (1) or more contiguous or adjacent properties;

2. Is under common control;

3. Belongs to a single major industrial grouping where all of the pollutant emitting activities belong to the same major group (i.e., all
have the same two (2) digit code) as described in the 1987 Standard Industrial Classification (SIC) Manual; and
4. Fugitive emissions are considered in determining if the
source is major if it belongs to a category listed in this clause:
a. Coal cleaning plants (with thermal dryers);
b. Kraft pulp mills;
c. Portland cement plants;
d. Primary zinc smelters;
e. Iron and steel mills;
f. Primary aluminum ore reduction plants;
g. Primary copper smelters;
h. Municipal incinerators capable of burning more than 250 tons of refuse per day;
i. Hydrofluoric, sulfuric, or nitric acid plants;
j. Petroleum refineries;
k. Lime plants;
l. Phosphate rock processing plants;
m. Coke oven batteries;
n. Sulfur recovery plants;
o. Carbon black plants (furnace process);
p. Primary lead smelters;
q. Fuel conversion plants;
r. Sintering plants;
s. Secondary metal production plants;
t. Chemical process plants;
u. Fossil-fuel boilers (or a combination thereof) totaling more than
250 million BTU per hour heat input;
v. Petroleum storage and transfer units with a total storage
capacity of more than 500,000 barrels;
w. Taconite ore processing plants;
x. Glass fiber processing plants;
y. Charcoal production plants;
z. Fossil-fuel-fired steam electric plants of more than 250 mil-
lion BTU per hour of heat input; or
aa. All other stationary source categories subject to a standard
promulgated pursuant to 42 U.S.C. 7411 or 42 U.S.C. 7412 and for
which the U.S. EPA has made an affirmative determination pursuant
42 U.S.C. 7602).
(46) "Major source threshold" means PTE:
(a) For HAPs:
1. Ten (10) tons per year or more of a single HAP;
2. Twenty-five (25) tons per year or more of combined HAPs;
or
3. A lesser quantity that the U.S. EPA established in a final
rulemaking; or
(b) 100 tons per year or more for regulated air pollutants other
than HAPs, except that:
1. For ozone nonattainment areas:
a. 100 tons per year or more of volatile organic compounds or
nitrogen oxides in areas classified as marginal or moderate;
b. Fifty (50) tons per year or more in areas classified as seri-
ous;
c. Twenty-five (25) tons per year or more in areas classified as
severe;
2. Fifty (50) tons per year or more of carbon monoxide for car-
bon monoxide nonattainment areas that are classified as serious
and in which stationary sources contribute significantly to carbon
monoxide levels; or
3. Seventy (70) tons per year or more of particulate matter
(PM_{10}) for PM_{10} nonattainment areas classified as serious.
(47) "Malfunction" means a sudden and infrequent failure of air
pollution control equipment, process equipment, or a process to
operate in a normal or usual manner that is not caused entirely or
in part by poor maintenance, careless operation, or other upset
condition or equipment breakdown that could have been reasona-
ably prevented.
(48) "Marginal nonattainment county" or "marginal nonattain-
ment area" means a county or portion of a county designated mar-
ginal nonattainment for the one (1) hour national ambient air quality
standard for ozone in 401 KAR 51:010.
(49) "Minor source" means a stationary source that emits and
has the potential to emit less than the major source thresholds.
(50) "Moderate nonattainment county" or "moderate nonat-
tainment area" means a county or portion of a county designated
moderate nonattainment for the one (1) hour national ambient air
quality standard for ozone in 401 KAR 51:010.
(51) "Modification" means any physical change in, or a change in
the method of operation of, an affected facility that:
(a) Increases the amount of any [a] regulated air pollutant
emitted into the atmosphere by that facility, or that [which] results
in the emission of any [a] regulated air pollutant into the
atmosphere not previously emitted; and
(b) Is not solely:
1. Maintenance, repair, and replacement that the cabinet de-
termines to be routine for a source category;
2. An increase in production rate of an affected facility, if that
increase can be accomplished without a capital expenditure on that
facility;
3. An increase in the hours of operation;
4. Use of an alternative fuel or raw material if, prior to the date
a standard becomes applicable to that source type, the affected
facility was designed to accommodate that alternative use. A fac-
tility shall be considered to be designed to accommodate an alterna-
tive fuel or raw material if that use could be accomplished under
the facility's construction specifications as amended prior to the
change.
5. Conversion to coal required for energy considerations, as
specified in 42 U.S.C. 7411(a)(8);
6. The addition of a control system or device to the primary func-
tion of which [whose primary function] is the reduction of air pollu-
ants, except that if an emission control system is removed or is re-
placed by a system that [which] the cabinet determines to be less
environmentally beneficial; or
7. The relocation or change in ownership of a source.
(52) "Modification under Title I of the Act" means a change at
a facility that would constitute a modification under 42 U.S.C. 7470 to
7480 or 42 U.S.C. 7501 to 7515.
(53) "Opacity" means the degree to which emissions reduce
the transmission of light and obscure the view of an object in the
background.
(54) "Owner or operator" means a person who owns, leases,
operates, controls, or supervises an affected facility or a source
to which an affected facility is a part.
(55) "Person" means an individual, public or private corpora-
tion, political subdivision, government agency, municipality, indus-
ty, co-partnership, association, firm, trust, estate, or other entity.
(56) "Potential to emit" or "PTE" means the maximum capacity
of a stationary source to emit a [regulated-air] pollutant under
[given] its physical and operational design where:
(a) A physical or operational limitation on the capacity of a
source to emit an air pollutant, including air pollution control
equipment and restrictions on hours of operation or on the type or
amount of material combusted, stored, or processed shall be treated
as part of its design if the limitation is enforceable as a practical
matter; and
(b) This definition does not alter or affect the use of this term
for other purposes of the Act or the term "capacity factor" as used
in the Acid Rain Program.
(57) "Proposed permit" means the version of a permit that the
cabinet proposes to issue and submit to the U.S. EPA for forty-five
(45) day review period.
(58) "Reconstruction" means the replacement of components
of an existing affected facility to the extent that:
(a) The fixed capital cost of the new components exceeds fifty
(50) percent of the fixed capital cost that would be required to con-
struct a comparable entirely new affected facility; and
(b) It is technologically and economically feasible to meet the
applicable requirements in 401 KAR Chapters 50 to 58 [66].
(59) "Reference method" means a method of sampling and
analyzing for an air pollutant as published in "prepared by" 40
CF.R. Part 60, Appendices A to D; or 40 C.F.R. Part 63, Appendices
A to D; or 40 C.F.R. Part 63, Appendix B; or 40 C.F.R. Part 63, Appendices A to D.
(60) "Regulated air pollutant" means:
(a) Nitrogen oxides;
(b) Volatile organic compounds;
(c) A pollutant for which a national ambient air quality standard has been promulgated pursuant to 42 U.S.C. 7409 (Section 109 of the Act);
(d) A Class I or Class II substance subject to a standard promulgated or established pursuant to 42 U.S.C. 7071 to 7671g (Title VI of the Act);
(e) A pollutant subject to a standard promulgated pursuant to 42 U.S.C. 7411;
(f) A hazardous air pollutant (HAP) subject to a standard or other requirement established pursuant to 42 U.S.C. 7412.
(61) "Renewal" means the process by which a permit is reissued at the end of its permit term.
(62) "Responsible official" means:
(a) For a corporation: a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or other person who performs similar policy or decision-making functions for the corporation, or a duly authorized representative of that person if the representative is responsible for the overall operation of one (1) or more manufacturing, production, or operating facilities applying for or subject to a permit and either:
1. The facilities employ more than 250 persons or have gross annual sales or expenditures exceeding $25,000,000 (in second quarter 1980 dollars); or
2. The delegation of authority to the representative is approved in advance by the cabinet;
(b) For a partnership or sole proprietorship, a general partner or the proprietor, respectively;
(c) For a municipality, state, federal, or other public agency, a principal executive officer or ranking elected official. For this administrative regulation, the principal executive officer of a federal agency includes the chief executive officer having responsibility for the overall operation of a principal geographic unit of the agency (e.g., a regional administrator of the U.S. EPA); or
(d) For the acid rain portion of a permit for an affected source, the affected source representative.
(63) "Section 502(p)(10) changes" means changes that contravene an express permit term and does not include changes that would violate applicable requirements or contravene federally enforceable permit terms and conditions that are monitoring (including test methods), recordkeeping, reporting, or compliance certification requirements.
(64) "Shutdown" means the cessation of an operation.
(65) "Source" means one (1) or more affected facilities contained within a given contiguous property line, which means the property is separated only by a public thoroughfare, stream, or other right of way.
(66) "Standard" means an emission standard, a standard of performance, or an ambient air quality standard (as promulgated in the Administrative regulations of the Division for Air Quality or [401-KAR-Chapters 50 to 65, including] the emission control requirements necessary to comply with 401 KAR Chapter 51.
(67) "Start-up" means the setting in operation of an affected facility.
(68) "State implementation plan" or "SIP" means the most recently prepared plan or revision required by 42 U.S.C. 7410, which has been approved by the U.S. EPA.
(69) "State-origin permit" means a permit that is issued pursuant to 401 KAR 52:040 and is not federally enforceable.
(70) "State-origin requirement" means an applicable requirement contained in 401 KAR Chapters 50 to 65, which is not mandated by the Act and is not federally enforceable.
(71) "Stationary source" means a building, structure, affected facility, or installation that emits or may emit a regulated air pollutant.
(72) "Title V permit" means a permit issued pursuant to 401 KAR 52:020 and Kentucky's Part 70 Operating Permit Program approved by the U.S. EPA on November 14, 1995 (60 FR 57186) and made effective on December 14, 1995.
(73) "Title V program" means a state operating permit program approved by the U.S. EPA pursuant to 42 U.S.C. 7661 to 7661f (Title V of the Act).
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REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Chris Hall

(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation defines terms used in the Kentucky administrative regulations contained in 401 KAR Chapter 52.
(b) The necessity of this administrative regulation: This administrative regulation defines terms used in the Kentucky administrative regulations contained in 401 KAR Chapter 52.
(c) How this administrative regulation conforms to the content of the authorizing statutes: The definitions contained in this administrative regulation that have corresponding federal definitions have been clarified and formatted to conform to KRS Chapter 13A requirements, but are not more stringent or otherwise different than the corresponding federal definitions.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation defines terms used in the Kentucky administrative regulations contained in 401 KAR Chapter 52.
(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 amendment updates the definition of "volatile organic compound" or "VOC" to be consistent with the federal definition at 40 C.F.R. 51.100(s) amended at 69 FR 69298 (November 29, 2004) and 69 FR 68304 (November 29, 2004). The amendment also makes simple changes in the text of certain definitions to conform with current KRS Chapter 13A requirements.
(b) The necessity of the amendment to this administrative regulation: This amendment is necessary in order for the cabinet to ensure Kentucky's State Implementation Plan (SIP) and Title V Permitting Program continue to meet the requirements of 42 U.S.C. 7401 to 7671q.
(c) How the amendment conforms to the content of the authorizing statutes: The definitions contained in this amendment that have corresponding federal definitions have been clarified and formatted to conform to KRS Chapter 13A requirements, but are not more stringent or otherwise different than the corresponding federal definitions.
(d) How the amendment will assist in the effective administration of statutes: This amendment defines terms used in the Kentucky administrative regulations contained in 401 KAR Chapter 52.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation does not directly impact any individual, business, organization, or state or local government.
(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 directly impact any individual, business, organization, or state or local government.
(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: There are no known initial costs for implementation of this administrative regulation.
(b) On a continuing basis: There are no known continuing costs for 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: No funding is required.
(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in fees or funding will be necessary 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 any fees, nor does it directly or indirectly increase any fees.
(9) TIERING: Is tiering applied?: No, this administrative regulation imposes no requirements.

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department for Environmental Protection
Division for Air Quality

401 KAR 59:001. Definitions for 401 KAR Chapter 59.

RELATES TO: KRS 224.01-010, 224.20-100, 224.20-110, 224.20-120, 40 C.F.R. Chapter I, Appendices A-K-50, 51,100(s), 53, 60, Appendices A and B-60, Appendix B-61, 42 U.S.C. 7410, 7411(a)(8)

STATUTORY AUTHORITY: KRS 224.10-100(5)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100(5) requires the [Natural Resources and] Environmental and Public Protection Cabinet to promulgate [previously] administrative regulations for the prevention, abatement, and control of air pollution. This administrative regulation defines the terms used in 401 KAR Chapter 59. The definitions contained in this administrative regulation—[which have corresponding federal definitions]—are neither [more] stringent nor otherwise different than the corresponding federal definitions.

Section 1. Definitions. (1) "Affected facility" means an apparatus, building, operation, road, or other entity or series of entities that [which] emits or may emit an air contaminant into the outdoor atmosphere.
(2) "Air contaminant" is defined in KRS 224.01-010.
(3) "Air pollutant" means an air contaminant.
(4) "Air pollution" is defined in KRS 224.01-010.
(5) "Air pollution control equipment" means a mechanism, device or contrivance used to control or prevent air pollution, that [which] is not, aside from air pollution control laws and administrative regulations, vital to the production of the normal product of the source or to its normal operation.
(6) "Alteration" means:
(a) The installation or replacement of air pollution control equipment at a source or under a permit;
(b) A physical change in or change in the method of operation of an affected facility that [which] increases the potential to emit a pollutant (to which a standard applies) emitted by the facility or that [which] results in the emission of an air pollutant (to which a standard applies) not previously emitted.
(7) "Alternative method" means a method of sampling and analyzing for an air pollutant that [which] is not a reference method or equivalent method and [but which] has been demonstrated to the cabinet's and the U.S. EPA's satisfaction to produce adequate results for its determination of compliance.
(8) "Ambient air" means that portion of the atmosphere, external to buildings, to which the general public has access.
(9) "Ambient air quality standard" means a numerical expression of a specified concentration level for a particular air contaminant and the time averaging interval over which that concentration level is measured and is a goal to be achieved in a stated time through the application of appropriate preventive or control measures.
(10) "AOAC" means Association of Official Analytical Chemists.
(11) "ANSl" means American National Standards Institute.
(12) "ASTM" means American Society for Testing and Materials.
(13) "BOD" means biochemical oxygen demand.
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(14) "BTU" means British Thermal Unit.
(15) "°C" means degree Celsius (centigrade).
(16) "Cabinet" is defined in KRS 224.01-010.
(17) "Cal" means calorie.
(18) "Capital expenditure" is defined in 40 C.F.R. 60.2 (means an expenditure for a physical or operational change to an affected facility that:
(a) Exceeds the product of:
(i) The applicable "annual asset guidelines-repair allowance percentage" specified in the Internal Revenue Service (IRS) Publication 534, and
(ii) The affected facility’s base, as defined by 26 U.S.C. 414;
and
(b) Is not reduced by an excluded addition as defined in IRS Publication 534.

(19) "cfm" means cubic feet per minute.
(20) "CH₄" means methane.
(21) "CO" means carbon monoxide.
(22) "CO₂" means carbon dioxide.
(23) "COD" means chemical oxidant demand.
(24) "Compliance" means that an owner or operator has undertaken a continuous program of construction, modification, or reconstruction of an affected facility, that an owner or operator has entered into a contractual obligation to undertake and complete, within a reasonable time, a continuous program of construction, modification, or reconstruction of an affected facility.
(25) "Compliance schedule" means a time schedule of remedial measures including an enforceable sequence of actions or operations leading to compliance with a limitation or standard.
(26) "Construction" means fabrication, erection, installation or modification of an air contaminant source.
(27) "Continuous monitoring system" means the total equipment, required under the applicable administrative regulations used to sample, to condition (if applicable), to analyze and to provide a permanent record of emissions or process parameters.
(28) "Design capacity" means the maximum rate at which a unit was designed to operate.
(29) "Director" means Director of the Division for Air Quality of the [Natural Resources-And] Environmental and Public Protection Cabinet.
(30) "District" is defined in KRS 224.01-010.
(31) "dscf" means dry cubic feet at standard conditions.
(32) "discm" means dry cubic meter at standard conditions.
(33) "Emission standard" means that numerical limit which fixes the amount of an air contaminant or air contaminants that may be emitted into the atmosphere from an affected facility or from air pollution control equipment installed in an affected facility.
(34) "Equivalent method" means a method of sampling and analyzing for an air pollutant that [which] has been demonstrated to the cabinet’s and the U.S. EPA’s satisfaction to have a consistent and quantitative relationship to the reference method, under specified conditions.
(35) "Exempt compound" or "exempt solvent" means an organic compound listed in the definition of volatile organic compound as not participating in atmospheric photochemical reactions.
(36) "Existing source" means a source that [which] is not a new source.
(37) "Extreme nonattainment county" or "extreme nonattainment area" means a county or portion of a county designated extreme nonattainment in 401 KAR 51:010.
(38) "°F" means degree Fahrenheit.
(39) "Fixed capital cost" means the capital needed to provide all the depreciable components.
(40) "ft" means feet.
(41) "Fuel" means natural gas, petroleum, coal, wood, or a form of solid, liquid or gaseous fuel derived from these materials for the purpose of creating useful heat.
(42) "Fugitive emissions" means those emissions that [which] could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.
(43) "g" means gram.
(44) "gal" means gallon.
(45) "gr" means grain.
(46) "HCl" means hydrochloric acid.
(47) "Hg" means mercury.
(48) "HF" means hydrogen fluoride.
(49) "hr" means hour.
(50) "Hydrocarbon" means an organic compound consisting predominantly of carbon and hydrogen.
(51) "H₂O" means water.
(52) "H₂SO₄" means sulfuric acid.
(53) "in" means inch.
(55) "Incorporation" means the process of igniting and burning solid, semisolid, liquid, or gaseous combustible wastes.
(56) "Intermittent emissions" means emissions of particulate matter into the open air from a process that [which] operates for less than any six (6) consecutive minutes.
(57) "J" means joule.
(58) "Kg" means kilogram.
(59) "l" means liter.
(60) "lb" means pound.
(61) "m" means meter.
(62) "m³" means cubic meter.
(63) "Major source" means a source with a [of which the] potential emission rate is equal to or greater than 100 tons per year of any one (1) of the following pollutants: particulate matter, sulfur oxides, nitrogen oxides, volatile organic compounds or carbon monoxide.
(64) "Malfunction" means a failure of air pollution control equipment, process equipment, or a process to operate in a normal or usual manner that is not caused entirely or in part by poor maintenance, careless operation, or other preventable upset condition or preventable equipment breakdown.
(65) "Marginal nonattainment county" or "marginal nonattainment area" means a county or portion of a county designated marginal nonattainment in 401 KAR 51:010.
(66) "mg" means microgram [micro-milli] minute.
(67) "mg" means milligram.
(68) "mm" means millimeter.
(69) "Mj" means megajoules.
(70) "MM" means million.
(71) "MM" means million.
(72) "mo" means month.
(73) "PM₂.₅" means particulate matter not greater than 2.5 microns in the air that are considered to contribute to the formation of fine particles which may cause respiratory health problems.
(74) "PM₁₀" means particulate matter not greater than 10 microns in the air that are considered to contribute to the formation of fine particles which may cause respiratory health problems.
(75) "Primary standard" means a standard applicable to that source type, the affected facility was designed to accommodate that alternative use. A facility shall be considered to be designed to accommodate an alternative fuel or raw material if that use could be accomplished under the facility’s construction specifications as amended prior to the change.
(76) "Proportional" means the ratio of a pollutant emitted from a process to the weighted average of the emissions from all processes occurring at the same site.
(77) "PM₅₂₅" means particulate matter not greater than 2.5 microns in the air that are considered to contribute to the formation of fine particles which may cause respiratory health problems.
(78) "PM₁₀₀₅" means particulate matter not greater than 10 microns in the air that are considered to contribute to the formation of fine particles which may cause respiratory health problems.
(79) "Primary function" means a primary function of which [which] is the reduction of air pollutants, unless [except if] an emission control system is removed or [is] replaced by a system that [which] the cabinet determines to be less environmentally beneficial; or
7. The relocation or change in ownership of an existing facility. 

[72] "Monitoring device" means the total equipment required in applicable administrative regulations, used to measure and record, if applicable, (if applicable) process parameters. 

[73] "New source" means a source, the construction, reconstruction, or modification of which commenced on or after the classification date as defined in the applicable administrative regulation irrespective of a change in emission rate. 

[74] "Ng" means nanograms. 

[75] "N" means nitrogen. 

[76] "Nitrogen oxides" means all oxides of nitrogen except nitrous oxide, as measured by test methods specified by the cabinet. 

[77] "NO" means nitric oxide. 

[78] "NO₂" means nitrogen dioxide. 

[79] "NOₓ" means nitrogen oxides. 

[80] "O₂" means oxygen. 

[81] "O₃" means ozone. 

[82] "Opacity" means the degree to which emissions reduce the transmission of light and obscure the view of an object in the background. 

[83] "Owner or operator" means a person who owns, leases, operates, controls, or supervises an affected facility or a source to which an affected facility is a part. 

[84] "oz" means ounce. 

[85] "Particulate matter" means a material, except uncombined water, that exists in a finely divided form as a liquid or a solid as measured by a [the appropriate] approved test method. 

[86] "Particulate matter emissions" means, except as used in 40 C.F.R. Part 60, all finely divided solid or liquid material, other than uncombined water, emitted to the ambient air as measured by applicable reference methods, or an equivalent or alternative method specified in 40 C.F.R. Chapter I, or by a test method specified in the approved state implementation plan. 

[87] "PM₁₀" means an individual, public or private corporation, political subdivision, government agency, municipality, industry, copartnership, association, firm, trust, estate, or other entity. 

[88] "PM₁₀" means particulate matter with an aerodynamic diameter less than or equal to a nominal two and one-half (2.5) micrometers as measured by a reference method in 40 C.F.R. Part 50, Appendix I, and designated in accordance with 40 C.F.R. Part 53, or by an equivalent method designated in accordance with 40 C.F.R. Part 53. 

[89] "PM₂.₅" means particulate matter with an aerodynamic diameter less than or equal to a nominal ten (10) micrometers as measured by a reference method in 40 C.F.R. Part 50, Appendix I, and designated in accordance with 40 C.F.R. Part 53, or by an equivalent method designated in accordance with 40 C.F.R. Part 53. 

[90] "PM₁₀ emissions" means finely divided solid or liquid material with an aerodynamic diameter less than or equal to a nominal ten (10) micrometers emitted to the ambient air as measured by an applicable reference method, or an equivalent or alternative method, specified in 40 C.F.R. Chapter I, or by a test method specified in the approved state implementation plan. 

[91] "PTE" means the maximum capacity of a stationary source to emit a pollutant under its physical and operational design, and [shall] shall: 

(a) Include air pollution control equipment and restrictions on the hours of operation or on the type or amount of material combusted, stored, or processed, if the limitation or its effect on emissions is federally enforceable; and 

(b) Not include secondary emissions. 

[92] "ppb" means parts per billion. 

[93] "ppm" means parts per million. 

[94] "pm" means parts per million (weight by weight). 

[95] "µg" means microgram. 

[96] "psia" means pounds per square inch absolute. 

[97] "psig" means pounds per square inch gage. 

[98] "Reconstruction" means the replacement of components of an existing affected facility to the extent that: 

(a) The fixed capital cost of the new components exceeds fifty (50) percent of the fixed capital cost that would be required to construct a comparable entirely new affected facility; 

(b) The estimated life of the affected facility after the replacement exceeds fifty (50) percent of the life of a comparable entirely new affected facility; 

(c) The components being replaced cause or contribute to the emissions from the affected facility; and 

(d) It is technologically and economically feasible to meet the applicable requirements of 401 KAR Chapters 50 to 65. 


[100] "Run" means the net period of time, either intermittent or continuous within the limits of good engineering practice, when [at which] an emission sample is collected. 

[101] "Runoff water" means water at standpipe conditions. 

[102] "sec" means second. 

[103] "Secondary emissions" means emissions that: 

(a) Occur as a result of the construction or operation of a major secondary stationary source or major modification; and 

(b) Do not come from the major stationary source or major modification itself; 

(c) Are specific, well defined, quantifiable, and impact the same general area as the stationary source modification that causes [which caused] the secondary emissions; 

(d) Include emissions from an offsite support facility that [which] would not otherwise be constructed or increase its emissions as a result of the construction or operation of the major stationary source or major modification; and 

[104] "SO₂" means sulfur dioxide. 

[105] "Source" means one (1) or more affected facilities contained within a given contiguous property line, which means the property is separated only by a public thoroughfare, stream, or other right of way. 

[106] "SO₃" means sulfur trioxide. 

[107] "Stack or chimney" means a flue, conduit, or duct arranged to conduct emissions to the atmosphere. 

[108] "Standard" means an emission standard, a standard of performance, or an ambient air quality standard as promulgated in [under] the administrative regulations of the Division for Air Quality or the emission control requirements necessary to comply with 401 KAR Chapter 51, [Title 40, Chapter 41, of the administrative regulations of the Division for Air Quality]. 

[109] "Standard conditions" means: 

(a) For source measurements, [means] twenty (20) degrees Celsius (sixty-eight (68) degrees Fahrenheit) and a pressure of 760 mm Hg (29.92 in. of Hg); 

(b) For the purpose of air quality determinations, [means] twenty-five (25) degrees Celsius (seventy-seven (77) degrees Fahrenheit) and a reference pressure of 760 mm Hg. 

[110] "Start-up" means the setting in operation of an affected facility. 

[111] "State implementation plan" or "SIP" means the most recently approved plan or revision required by 42 U.S.C. 7410 that [which] has been approved by the U.S. EPA. 


[113] "Total suspended particulates" or "TSP" means particulate matter as measured by the method de-
scribed in 40 C.F.R. Part 50, Appendix B [as 40 C.F.R. 60].
(119) [448] four" means ton per year.
(119) [448] "TP" means total phosphorus.
(120) "TSS" means total suspended solids.
(121) "uncombined water" means water that [which] can be separated from a compound by ordinary physical means and that [which] is not bound to a compound by a chemical or physical state.
(121) "Urban center" means a county that [which] is a part of an urbanized area with a population greater than 200,000 based upon the 1980 census. If a portion of a county is a part of an urbanized area, then the entire county shall be classified as urban for [with respect to] the administrative regulations of the Division for Air Quality.
(123) "Urbanized area" means an area defined [as such] by the U.S. Department of Commerce, Bureau of Census.
(124) "U.S. EPA" means United States Environmental Protection Agency.
(125) "UTM" means Universal Transverse Mercator.
(126) "Volatile organic compound" or "VOC" is defined in 40 C.F.R. 51.100(a).
(126) "Volatile organic compound" or "VOC" means an organic compound which participates in atmospheric photochemical reactions. This includes an organic compound other than the following compounds: methanol; ethylene; carbon monoxide; carbon dioxide; 1,1,1-trichloroethylene; 1,1,1,2,2,2-hexafluorobutane; dichloroethylene; vinyl chloride; ethylene oxide; butadiene; methyl vinyl ketone; ethylbenzene; toluene; xylene; tetrachloroethylene; trichloroethylene; perchloroethylene; 1,1,1-trichloroethane; 1,1,1,2,2,2-hexafluoroethane; 1,1,1,2,2,3,3,3-octafluoropropane; 1,1,1,2-trichloroethylene; methylene chloride; benzene; formaldehyde; acrylonitrile; acrylamide; acrylate; 1,3-butadiene; 1,3-dichloropropene; 1,2-dichloroethane; 2,2-dichloroethylene; 1,2-dichloropropane; 1,2-dibromoethane; 1,1-dichloroethane; 1,1-dichloro-2,2,2-trifluoroethane; 1,1-dichloro-1,2-difluoro-2,2-dichloroethane; 1,1-dichloro-1,2-difluoro-2,2,2-trichloroethane; 1,1-dichloro-1,2,2,2-tetrafluoroethane; 1,1-dichloro-1,2,2-trifluoroethane; 1,1-dichloro-1,2,2,2-tetrafluoroethane; 1,1-dichloro-1,2,2,3,3,3-hexafluoropropene; 1,1-dichloro-1,2-difluoro-1,2-dichloroethane; 1,1-dichloro-1,2-difluoro-2,2-dichloroethane; 1,1-dichloro-1,2-difluoro-1,1,2-trichloroethylene; 1,1-dichloro-1,2-difluoro-1,2,2-trichloroethane; 1,1-dichloro-1,2-difluoro-1,1,2-trichloroethane; 1,1-dichloro-1,2-difluoro-1,1,2,2-tetrafluoroethane; 1,1-dichloro-1,2-difluoro-1,1,2,2,2-pentafluoroethane; 1,1-dichloro-1,2-difluoro-1,1,2,2,3,3,3-heptafluoropropene; 1,1-dichloro-1,2-difluoro-1,1,2,2,3,3,3-heptafluoropropene; 1,1-dichloro-1,2-difluoro-1,1,2,2,3,3,3-heptafluoropropene; 1,1-dichloro-1,2-difluoro-1,1,2,2,3,3,3-heptafluoropropene; 1,1-dichloro-1,2-difluoro-1,1,2,2,3,3,3-heptafluoropropene; 1,1-dichloro-1,2-difluoro-1,1,2,2,3,3,3-heptafluoropropene.
July 25, 2006 at 10 a.m. in the Conference Room of the Division for Air Quality at 803 Schenkel Lane, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing five working days prior to the hearing, of their intent to attend. 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. If you do not wish to be heard at the hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until July 31, 2006. Send written notification of intent to be heard at the hearing or written comments on the proposed administrative regulation to the contact person. The hearing facility is accessible to persons with disabilities. Requests for reasonable accommodations, including auxiliary aids and services necessary to participate in the hearing, may be made to the contact person at least five (5) working days prior to the hearing.

CONTACT PERSON: Chris Hall, Environmental Technologist I, Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky 40601, phone (502) 573-3382, fax (502) 573-3787

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Chris Hall
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation defines terms used in the Kentucky administrative regulations contained in 401 KAR Chapter 59.
(b) The necessity of the administrative regulation: This administrative regulation defines terms used in the Kentucky administrative regulations contained in 401 KAR Chapter 59.
(c) How this administrative regulation conforms to the content of the authorizing statutes: The definitions contained in this administrative regulation have corresponding federal definitions which have been clarified and formatted to conform to KRS Chapter 13A requirements, but are not more stringent or otherwise different than the corresponding federal definitions.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation defines terms used in the Kentucky administrative regulations contained in 401 KAR Chapter 59.

(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 definition of "volatile organic compound" or "VOC" to be consistent with the federal definition at 40 C.F.R. 51.100(a), amended at 69 FR 69298 (November 29, 2004) and 69 FR 69304 (November 29, 2004). The amendment makes simple changes in the text of certain definitions to conform with current KRS Chapter 13A requirements.
(b) The necessity of the amendment to this administrative regulation: This amendment is necessary in order for the cabinet to ensure Kentucky's State Implementation Plan (SIP) and Title V Permitting Program continue to meet the requirements of 42 U.S.C. 7401 to 7471q.
(c) How the amendment conforms to the content of the authorizing statutes: The definitions contained in this amendment that have corresponding federal definitions have been clarified and formatted to conform to KRS Chapter 13A requirements, but are not more stringent or otherwise different than the corresponding federal definitions.
(d) How the amendment will assist in the effective administration of statutes: This amendment defines terms used in the Kentucky administrative regulations contained in 401 KAR Chapter 59.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation does not directly impact any individual, business, organization, or state or local government.

(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 directly impact any individual, business, organization, or state or local government.

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

(a) Initially: There are no known initial costs for implementation of this administrative regulation.

(b) On a continuing basis: There are no known continuing costs for implementation of this administrative regulation.

(5) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No funding is required.

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

(9) Determine whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish any fees, nor does it directly or indirectly increase any fees.

(9) TIERING: is tiering applied?: No. This administrative regulation imposes no requirements.

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department for Environmental Protection
Division for Air Quality
(Amendment)

401 KAR 61:001. Definitions for 401 KAR Chapter 61.

RELATES TO: KRS 224.01-010, 224.20-100, 224.20-110, 224.20-120, 40 C.F.R. Chapter I, Appendices A-K-50, 51.100(s), 53, 60, Appendices A and B-60, Appendix B-61, 42 U.S.C. 7410, 7411(a)(8)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100(5)

STATUTORY AUTHORITY: KRS 224.10-100(5)

Section 1. Definitions. (1) "Affected facility" means an apparatus, building, operation, road, or other entity or series of entities that [which] emits or may emit an air contaminant into the outdoor atmosphere.

(2) "Air contaminant" is defined in KRS 224.01-010.

(3) "Air pollutant" means an air contaminant.

(4) "Air pollution" is defined in KRS 224.01-010.

(5) "Air pollution control equipment" means a mechanism, device or contrivance used to control or prevent air pollution, that [which] is not, aside from air pollution control laws and administrative regulations, vital to production of the normal product of the source or to its normal operation.

(6) "Alteration" means:

(a) The installation or replacement of air pollution control equipment at a source; or

(b) A physical change in or change in the method of operation of an affected facility that [which] increases the potential to emit a pollutant (to which a standard applies) emitted by the facility or that [which] results in the emission of an air pollutant (to which a standard applies) not previously emitted.

(7) "Alternative method" means a method of sampling and analyzing for an air pollutant that [which] is not a reference method or equivalent method and [but which] has been demonstrated to the cabinet's and the U.S. EPA's satisfaction to produce adequate results for its determination of compliance.

(8) "Ambient air" means that portion of the atmosphere, external to buildings, to which the general public has access.

(9) "Ambient air quality standard" means a numerical expression of a specified concentration level for a particular air contaminant and the time averaging interval over which that concentration level is measured and is a goal to be achieved in a stated time through the application of appropriate preventive or control measures.

(10) "AOAC" means Association of Official Analytical Chemists.

(11) "ANSI" means American National Standards Institute.

(12) "ASTM" means American Society for Testing and Materials.

(13) "BOD" means biochemical oxidant demand.

(14) "BTU" means British Thermal Unit.

(15) "C" means degree Celsius (centigrade).

(16) "Cabinet" is defined in KRS 224.01-010.

(17) "Cal" means calorie.

(18) "Capital expenditure" is defined in 40 C.F.R. 60.2 [mean an expenditure for a physical or operational change to an affected facility that:

(a) Exceeds the product of:

1. The applicable annual asset guidelines-repair-allowance percentage specified in the Internal Revenue Service (IRS) Publication 534; and

2. The affected facility's basic, as defined by 26 U.S.C. 1012;

and is not reduced by an excluded addition as defined in IRS Publication 534]

(19) "cfm" means cubic feet per minute.

(20) "CH₄" means methane.

(21) "CO" means carbon monoxide.

(22) "CO₂" means carbon dioxide.

(23) "COD" means chemical oxidant demand.

(24) "Commence" means that an owner or operator has undertaken a continuous program of construction, modification, or reconstruction of an affected facility, or that an owner or operator has entered into a contractual obligation to undertake and complete, within a reasonable time, a continuous program of construction, modification, or reconstruction of an affected facility.

(25) "Compliance schedule" means a time schedule of remedial measures including a reasonable sequence of actions or operations leading to compliance with a limitation or standard.

(26) "Construction" means fabrication, erection, installation or modification of an air contaminant source.

(27) "Continuous monitoring system" means the total equipment, required under the applicable administrative regulations used to sample, to condition (if applicable), to analyze and to provide a permanent record of emissions or process parameters.

(28) "Design capacity" means the maximum rate at which a unit was designed to be operated.

(29) "Director" means Director of the Division for Air Quality of the [Natural Resources and] Environmental and Public Protection Cabinet.

(30) "District" is defined in KRS 224.01-010.

(31) "dscf" means dry cubic feet at standard conditions.

(32) "dpcm" means dry cubic meter at standard conditions.

(33) "Emission standard" means that numerical limit that [which] fixes the amount of an air contaminant or air contaminants that may be vented into the atmosphere from an affected facility or from air pollution control equipment installed in an affected facility.

(34) "Equivalent method" means a method of sampling and analyzing for an air pollutant that [which] has been demonstrated to the cabinet's and the U.S. EPA's satisfaction to have a consistent and quantitatively known relationship to the reference method, under specified conditions.

(35) "Exempt compound" or "exempt solvent" means an organic compound listed in the definition of volatile organic compound as not participating in atmospheric photochemical reactions.

(36) "Existing source" means a source that [which] is not a new source.

(37) "Extreme nonattainment county" or "extreme nonattainment area" means a county or portion of a county designated extreme nonattainment in 401 KAR 51.010.

(38) "F" means degree Fahrenheit.

(39) "Fixed capital cost" means the capital needed to provide all the depreciable components.

(40) "Fuel" means natural gas, petroleum, coal, wood, or a
form of solid, liquid, or gaseous fuel derived from these materials for the purpose of creating useful heat.
(42) "Fugitive emissions" means those emissions that [which] could not reasonably pass through a stack, chimney, vent, or functionally equivalent opening.
(43) "g" means gram.
(44) "gal" means gallon.
(45) "mg" means gram.
(46) "HCl" means hydrochloric acid.
(47) "Hg" means mercury.
(48) "Hf" means hydrogen fluoride.
(49) "hr" means hour.
(50) "Hydrocarbon" means an organic compound consisting predominantly of carbon and hydrogen.
(51) "H" means water.
(52) "H2S" means hydrogen sulfide.
(53) "H2SO4" means sulfuric acid.
(54) "in" means inch.
(55) "Inconeration" means the process of igniting and burning solid, semisolid, liquid, or gaseous combustible wastes.
(56) "Intermittent emissions" means emissions of particulate matter into the open air from a process that [which] operates for less than any six (6) consecutive minutes.
(57) "J" means pule.
(58) "Kg" means kilogram.
(59) "I" means liter.
(60) "lb" means pound.
(61) "mm" means meter.
(62) "ppm" means parts per million.
(63) "Major source" means a source with a [of which the] potential emission rate [as] equal to or greater than 100 tons per year of any one (1) of the following pollutants: particulate matter, sulfur oxides, nitrogen oxides, volatile organic compounds or carbon monoxide.
(64) "Malfunction" means a failure of air pollution control equipment, process equipment, or a process to operate in nonlest or usual manner that is not caused entirely or in part by poor maintenance, careless operation, or other preventable equipment breakdown.
(65) "Marginal nonattainment county" or "marginal nonattainment area" means a county or portion of a county designated marginal nonattainment in 401 KAR 51:010.
(66) "μg" means microgram ["μg" means microgram].
(67) "mg" means milligram.
(68) "min" means minute.
(69) "MJ" means megajoules.
(70) "MM" means million.
(71) "M" means million.
(72) "mo" means month.
(73) "MPM" means moderate nonattainment county or "moderate nonattainment area" means a county or portion of a county designated moderate nonattainment in 401 KAR 51:010.
(74) "Modification" means any [a] physical change in, or change in the method of operation of, an affected facility that [which]
(a) increases the amount of an air pollutant (to which a standard applies) emitted into the atmosphere; or that facility or that [which] results in the emission of an air pollutant (to which a standard applies) into the atmosphere not previously emitted; and
(b) is not solely:
 1. Maintenance, repair, and replacement that [which] the cabinet determines to be routine for a source category;
 2. An increase in production rate of an affected facility, if that increase can be accomplished without a capital expenditure on that facility;
 3. An increase in the hours of operation;
 4. Use of an alternative fuel or raw material if, prior to the date a standard becomes applicable to that source type, the affected facility was designed to accommodate that alternative use. A facility shall be considered to be designed to accommodate an alternative fuel or raw material if that use could be accomplished under the facility's construction specifications as amended prior to the change.
 5. Conversion to coal required for energy considerations, as specified in 42 U.S.C. 7411(a)(8).
 6. The addition or use of a system or device the primary function of which [whose primary function] is the reduction of air pollutants, except if an emission control system is removed or is replaced by a system that [which] the cabinet determines to be less environmentally beneficial; or
 7. The relocation or change in ownership of an existing facility.
(75) "Monitoring device" means the total equipment, required in applicable administrative regulations, used to measure and record, if applicable, [if applicable-process-parameters].
(76) "New source" means a source, the construction, reconstruction, or modification of which commenced on or after the classification date as defined in the applicable administrative regulation irrespective of a change in emission rate.
(77) "Nitro" means nanograms.
(78) "N2" means nitrogen.
(79) "NOx" means nitrogen oxides.
(80) "NOx" means nitrogen oxides.
(81) "NO" means nitric oxide.
(82) "NO2" means nitrogen dioxide.
(83) "O2" means oxygen.
(84) "O3" means ozone.
(85) "Opacity" means the degree to which emissions reduce the transmission of light and obscure the view of an object in the background.
(86) "Owner or operator" means a person who owns, leases, operates, controls, or supervises an affected facility or a source to which an affected facility is a part.
(87) "oz" means ounce.
(88) "Particulate matter" means a material, except uncombined water, that [which] exists in a finely divided form as a liquid or as a solid as measured by an [the appropriate] approved test method.
(89) "Particulate matter emissions" means, except as used in 40 C.F.R. Part 60, all finely divided solid or liquid material, other than uncombined water, emitted to the ambient air as measured by applicable reference methods, or an equivalent or alternative method specified in 40 C.F.R. Chapter I, or by a test method specified in the approved state implementation plan.
(90) "Person" means an individual, public or private corporation, political subdivision, government agency, municipality, industry, copartnership, association, firm, trust, estate, or other entity.
(91) "PM2.5" means particulate matter with an aerodynamic diameter less than or equal to a nominal two-and-a-half (2.5) micrometers as measured by a reference method in 40 C.F.R. Part 60, Appendix I, and designated in accordance with 40 C.F.R. Part 53, or by an equivalent method designated in accordance with 40 C.F.R. Part 53.
(92) "PM10" means particulate matter with an aerodynamic diameter less than or equal to a nominal ten (10) micrometers as measured by a reference method in 40 C.F.R. Part 60, Appendix I, and designated in accordance with 40 C.F.R. Part 53, or by an equivalent method designated in accordance with 40 C.F.R. Part 53.
(93) "PM10 emissions" means finely divided solid or liquid material with an aerodynamic diameter less than or equal to a nominal ten (10) micrometers emitted to the ambient air as measured by an applicable reference method, or an equivalent or alternative method, specified in 40 C.F.R. Chapter I, or by a test method specified in the approved state implementation plan.
(94) "Potential to emit" or "PTE" means the maximum capacity of a stationary source to emit a pollutant under its physical and operational design, and [which] shall:
(a) Include air pollution control equipment and restrictions on the hours of operation or on the type or amount of material combusted, stored, or processed, if the limitation or its effect on emissions is federally enforced.
(b) Not include secondary emissions.
"VOC" means Volatile Organic Compound; "VOC" stands for Volatile Organic Compound. It is a term used in environmental science to describe chemicals that evaporate easily at room temperature. These chemicals are released into the atmosphere and can contribute to air pollution and human health issues. VOCs are emitted from various sources, including vehicles, industrial processes, and household products. The emission of VOCs is regulated by various government agencies to ensure air quality and public health.
have been approved by the cabinet and the U.S. EPA.)
(127) "yd" means yard.

JOHN W. CLAY, Deputy Secretary
For LAJUANA S. WILCHER, Secretary
APPROVED BY AGENCY: June 14, 2006
FILED WITH LRC: June 15, 2006 at 11 a.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A
public hearing on this administrative regulation shall be held on
July 26, 2006 at 10 a.m. in the Conference Room of the Division
for Air Quality at 803 Schenkel Lane, Frankfort, Kentucky. Indi-
viduals interested in being heard at this hearing shall notify this
agency in writing five workdays prior to the hearing, of their intent
to attend. This hearing is open to the public. Any person who
wishes to be heard will be given an opportunity to comment on
the proposed administrative regulation. If you do not wish to be heard
at the hearing, you may submit written comments on the proposed
administrative regulation. Written comments shall be accepted until
July 31, 2006. Send written notification of intent to be heard at the
hearing or written comments on the proposed administrative regu-
lation to the contact person. The hearing facility is accessible to
people with disabilities. Requests for reasonable accommoda-
tions, including auxiliary aids and services necessary to participate
in the hearing, may be made to the contact person at least five (5)
workdays prior to the hearing.

CONTACT PERSON: Chris Hall, Environmental Technologist I,
Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky
40601, phone (502) 573-3082, fax (502) 573-3797.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Chels Hall
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administra-
tive regulation defines terms used in the Kentucky administrative
regulations contained in 401 KAR Chapter 61.
(b) The necessity of this administrative regulation: This adminis-
trative regulation defines terms used in the Kentucky adminis-
terative regulations contained in 401 KAR Chapter 61.
(c) How this administrative regulation conforms to the content
of the authorizing statutes: The definitions contained in this adminis-
terative regulation that have corresponding federal definitions
have been clarified and formatted to conform to KRS Chapter 13A
requirements, but are not more stringent or otherwise different than
the corresponding federal definitions.
(d) How this administrative regulation currently assists or will
assist in the effective administration of the statutes: This adminis-
terative regulation defines terms used in the Kentucky administrative
regulations contained in 401 KAR Chapter 61.
(2) If this is an amendment to an existing administrative regu-
lation, provide a brief summary of:
(a) How the amendment will change this existing administrative
regulation: This amendment updates the definition of "volatile or-
ganic compound" or "VOC" to be consistent with the federal defini-
tion at 40 C.F.R. 51.100(a), amended at 59 FR 69296 (November
29, 2004) and 59 FR 69304 (November 29, 2004). The amend-
ment also makes simple changes in the text of certain definitions to
conform with current KRS Chapter 13A requirements.
(b) The necessity of the amendment to this administrative regu-
lation: This amendment is necessary in order for the cabinet to
ensure Kentucky's State Implementation Plan (SIP) and Title V
Permitting Program continue to meet the requirements of 42 U.S.C.
7401 to 7671q.
(c) How the amendment conforms to the content of the
authorizing statutes: The definitions contained in this amendment
that have corresponding federal definitions have been clarified and
formatted to conform to KRS Chapter 13A requirements, but are
not more stringent or otherwise different than the corresponding
federal definitions.
(d) How the amendment will assist in the effective administra-
tion of statutes: This amendment defines terms used in the Ken-
tucky administrative regulations contained in 401 KAR Chapter 61.
(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 does not directly
impact any individual, business, organization, or state or local gov-
ernment.
(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 directly impact any individual,
business, organization, or state or local government.
(5) Provide an estimate of how much it will cost to implement
this administrative regulation:
(a) Initially: There are no known initial costs for implementation
of this administrative regulation.
(b) On a continuing basis: There are no known continuing costs
for implementation of this administrative regulation.
(6) What is the source of the funding to be used for the imple-
mentation and enforcement of this administrative regulation. No
funding is required.
(7) Provide an assessment of whether an increase in fees or
funding will be necessary to implement this administrative regu-
lation, if new, or by the change if it is an amendment: No increase
in fees or funding will be necessary to implement this administrative
regulation.
(8) State whether or not this administrative regulation estab-
lishes any fees or directly or indirectly increases any fees: This
administrative regulation does not establish any fees, nor does it
directly or indirectly increase any fees.
(9) TIEHING: is being applied?: No. This administrative regu-
lation imposes no requirements.

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department for Environmental Protection
Division for Air Quality
(Amendment)

401 KAR 63:001. Definitions for 401 KAR Chapter 63.
RELATES TO: KRS 224.01-010, 224.20-100, 224.20-110,
224.20-120, 40 C.F.R. Chapter I, Appendices A-K-50, 51.100(s),
53, 60, Appendices A and B-60, Appendix B-61, 42 U.S.C. 7410,
7411(a)(6).
STATUTORY AUTHORITY: KRS 224.10-1009(5)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-
100(5) requires the [Natural Resource and Environmental and
Public Protection Cabinet to promulgate [promulgate]] administrative
regulations for the prevention, abatement, and control of air pollu-
tion. This administrative regulation defines the terms used in 401
KAR Chapter 63. The definitions contained in this administrative
regulation which have corresponding federal definitions, are not
more stringent or otherwise different than the corresponding fed-
eral definitions.

Section 1. Definitions. (1) "Affected facility" means an appara-
tus, building, operation, road, or other entity or series of entities
that [which] emits or may emit an air contaminant into the outdoor
atmosphere.
(2) "Air contaminant" is defined in KRS 224 01-010.
(3) "Air pollutant" means an air contaminant.
(4) "Air pollution" is defined in KRS 224.01-010.
(5) "Air pollution control equipment" means a mechanism, de-
vice or contrivance used to control or prevent air pollution, that
[which] is not, aside from air pollution control laws and administra-
tive regulations, vital to production of the normal product of the
source or to its normal operation.
(6) "Alteration" means:
(a) The installation or replacement of air pollution control
equipment at a source; or
(b) A physical change in or change in the method of operation
of an affected facility that [which] increases the potential to emit a
pollutant (to which a standard applies) emitted by the facility or that
[which] results in the emission of an air pollutant (to which a stan-
dard applies) not previously emitted.
(7) "Alternative method" means a method of sampling and
analyzing for an air pollutant that [which] is not a reference method
or equivalent method and [but which] has been demonstrated to
the cabinet's and the U.S. EPA's satisfaction to produce adequate
results for its determination of compliance.

(8) "Ambient air" means that portion of the atmosphere, exter-
nal to buildings, to which the general public has access.

(9) "Ambient air quality standard" means a numerical expres-
sion of a specified concentration level for a particular air contami-
nant and the time averaging interval over which that concentra-
tion level is measured and is a goal to be achieved in a stated time
through the application of appropriate preventive or control meas-
ures.

(10) "AOAC" means Association of Official Analytical Chem-
ists.

(11) "ANSI" means American National Standards Institute.

(12) "ASTM" means American Society for Testing and Materi-
als.

(13) "BOD" means biochemical oxygen demand.

(14) "BTU" means British Thermal Unit.

(15) "°C" means degree Celsius (centigrade).

(16) "Cabinet" is defined in KRS 224.01-010.

(17) "Cal" means calorie.

(18) "Capital expenditure" is defined in 40 C.F.R. 60.2, [means
an expenditure for a physical or operational change to an affected
facility that:
(a) Exceeds the product of:
1. The applicable "annual asset guidelines--repair--allowance
percentage" specified in the Internal Revenue Service (IRS) Publica-
tion 534, 4-1, and
2. The affected facility's basis, as defined by 26 U.S.C. 1012; and
(b) Is not reduced by an excluded addition as defined in IRS
Publication 534.]

(19) "cfm" means cubic feet per minute.

(20) "CH₄" means methane.

(21) "CO" means carbon monoxide.

(22) "CO₂" means carbon dioxide.

(23) "COD" means chemical oxygen demand.

(24) "Commerce" means that an owner or operator has un-
taken a continuous program of construction, modification, or
reconstruction of an affected facility, or that an owner or opera-
tor has entered into a contractual obligation to undertake and com-
plete, within a reasonable time, a continuous program of construc-
tion, modification, or reconstruction of an affected facility.

(25) "Compliance schedule" means a time schedule of reme-
dial measures including an enforceable sequence of actions or
operations leading to compliance with a limitation or standard.

(26) "Construction" means fabrication, erection, installation or
modification of an air contaminant source.

(27) "Continuous monitoring system" means the total equip-
ment, required under applicable administrative regulations
used to sample, to condition (if applicable), to analyze and to pro-
vide a permanent record of emissions or process parameters.

(28) "Director" means Director of the Division for Air Quality of
the [Natural Resources and] Environmental and Public Protection
Cabinet.

(29) "District" is defined in KRS 224.01-010.

(30) "dscf" means dry cubic feet at standard conditions.

(31) "dscm" means dry cubic meter at standard conditions.

(32) "Emission standard" means that numerical limit that
[which] fixes the amount of an air contaminant or air contaminants
that may be vented into the atmosphere from an affected facility or
from air pollution control equipment installed in an affected facility.

(33) "Equivalent method" means a method of sampling and
analyzing for an air pollutant that [which] has been demonstrated to
the cabinet's and the U.S. EPA's satisfaction to have a consistent
and quantitatively known relationship to the reference method,
under specified conditions.

(34) "Exempt compound" or "exempt solvent" means an or-
ganic compound listed in the definition of volatile organic com-
ponents as not participating in atmosphere photochemical reac-
tions.

(35) "Existing source" means a source that [which] is not a new
source.

(36) "Extreme nonattainment county" or "extreme nonattain-
ment area" means a county or portion of a county designated ex-
trame nonattainment in 401 KAR 51:010.

(37) "°F" means degree Fahrenheit.

(38) "Fixed capital cost" means the capital needed to provide
all the depreciable components.

(39) "ft" means foot.

(40) "fuel" means natural gas, petroleum, coal, wood, or a
form of solid, liquid, or gaseous fuel derived from these materials
for the purpose of creating useful heat.

(41) "Fugitive emissions" means those emissions that [which]
could not reasonably pass through a stack, chimney, vent, or other
functionally equivalent opening.

(42) "g" means gram.

(43) "gal" means gallon.

(44) "gr" means grain.

(45) "HCI" means hydrochloric acid.

(46) "Hg" means mercury.

(47) "HF" means hydrogen fluoride.

(48) "hr" means hour.

(49) "hydrocarbon" means an organic compound consisting
predominantly of carbon and hydrogen.

(50) "H₂O" means water.

(51) "H₂S" means hydrogen sulfide.

(52) "H₂SO₄" means sulfuric acid.

(53) "in" means inch.

(54) "incineration" means the process of igniting and burning
solid, semisolid, liquid, or gaseous combustible wastes.

(55) "Intermittent emissions" means emissions of particulate
matter into the open air from a process that [which] operates for
less than any six (6) consecutive minutes.

(56) "J" means joule.

(57) "Kg" means kilogram.

(58) "l" means liter.

(59) "lb" means pound.

(60) "lm" means meter.

(61) "m³" means cubic meter.

(62) "Major source" means a source with a [of which the
potential emission rate is equal to or greater than] tons per year
of any one (1) of the following pollutants: particulate matter, sulfur
oxides, nitrogen oxides, volatile organic compounds or carbon
monoxide.

(63) "Malfunction" means a failure of air pollution control
equipment, process equipment, or a process to operate in a normal
or usual manner that is not caused entirely or in part by poor
maintenance, careless operation, or other preventable upset con-
dition or preventable equipment breakdown.

(64) "Marginal nonattainment county" or "marginal nonattain-
ment area" means a county or portion of a county designated mar-
ginal nonattainment in 401 KAR 51:010.

(65) "μg" means microgram. ["[μg]-minute].

(66) "mg" means milligram.

(67) "min" means minute.

(68) "μM" means megajoules. ["μM]-[μM]-[μM]-[μM]-[μM]-

(69) "mm" means millimeter.

(70) "Knm" means kilometer.

(71) "mo" means month.

(72) "[μM]" "Moderate nonattainment county" or "moderate nonattain-
ment area" means a county or portion of a county designated
moderate nonattainment in 401 KAR 51:010.

(73) [729] "Modification" means any [a] physical change in, or
change in the method of operation of, an affected facility that
[which]:
(a) Increases the amount of an air pollutant (to which a stan-
dard applies) emitted into the atmosphere by that facility or that
[which] results in the emission of an air pollutant (to which a stan-
dard applies) into the atmosphere not previously emitted; and
(b) Is not solely: 1. Maintenance, repair, and replacement that [which] the cabi-
net determines to be routine for a source category;
2. An increase in production rate of an affected facility, if that
increase can be accomplished without a capital expenditure on that
facility;
3. An increase in the hours of operation;
4. Use of an alternative fuel or raw material if, prior to the date
a standard becomes applicable to that source type, the affected
facility was designed to accommodate that alternative use. A facility shall be considered to be designed to accommodate an alternative fuel or raw material if such use could be accomplished under the facility’s construction specifications as amended prior to the change.

5. Conversion to coal required for energy considerations, as specified in 42 U.S.C. 7411(a)(6);

6. The addition of or use of a system or device the primary function of which [whose primary function] is the reduction of air pollutants, except if an emission control system is removed or is replaced by a system that [which the cabinet determines to be less environmentally beneficial; or

7. The relocation or change in ownership of an existing facility.

(74) [74] "Monitoring device" means the total equipment required in applicable administrative regulations, used to measure and record, if applicable, (if applicable) process parameters.

(75) [74] "New source" means a source, the construction, reconstruction, or modification of which commenced on or after the classification date as defined in the applicable administrative regulation irrespective of a change in emission rate.

(76) [76] "NM" means nanograms.

(77) [77] "No" means no.

(78) [77] "NOX" means nitrogen oxides.

(79) [77] "NOX" means nitrogen oxides.

(80) [78] "Nitrogen oxides" means all oxides of nitrogen except nitrous oxide, as measured by test methods specified by the cabinet.

(81) [78] "NO" means nitric oxide.

(82) [78] "NO2" means nitrogen dioxide.

(83) [78] "NOx" means nitrogen oxides.

(84) [82] "Ox" means oxygen.

(85) [82] "O2" means ozone.

(86) [84] "Operating" means the degree to which emissions reduce the transmission of light and obscure the view of an object in the background.

(87) [84] "Owner or operator" means a person who owns, leases, operates, or controls or supervises an affected facility or a source to which an affected facility is a part.

(88) [86] "Ounce" means ounce.

(89) [86] "Particulate matter" means a material, except an uncontaminated water, that [which] exists in a finely divided form as a liquid or a solid [as] measured by an [the-]appropriate approved test method.

(90) [88] "Particulate matter emissions" means, except as used in 40 C.F.R. Part 60, all finely divided solid or liquid material, other than uncontaminated water, emitted to the ambient air as measured by applicable reference methods, or an equivalent or alternative method specified in 40 C.F.R. Chapter I, or by a test method specified in the approved state implementation plan.

(91) [88] "Person" means an individual, public or private corporation, political subdivision, governmental entity, municipality, industry, co-partnership, association, firm, trust, estate, or other entity.

(92) [90] "PMx" means particulate matter with an aerodynamic diameter less than or equal to a nominal two-and-a-half (2.5) micrometers as measured by a reference method in 40 C.F.R. Part 50, Appendix I, and designated in accordance with 40 C.F.R. Part 53, or by an equivalent method designated in accordance with 40 C.F.R. Part 53.

(93) [90] "PMx" means particulate matter with an aerodynamic diameter less than or equal to a nominal ten (10) micrometers as measured by a reference method in 40 C.F.R. Part 50, Appendix I, and designated in accordance with 40 C.F.R. Part 53, or by an equivalent method designated in accordance with 40 C.F.R. Part 53.

(94) [90] "PM10 emissions" means finely divided solid or liquid material with an aerodynamic diameter less than or equal to a nominal ten (10) micrometers emitted to the ambient air as measured by an applicable reference method, or an equivalent or alternative method, specified in 40 C.F.R. Chapter I, or by a test method specified in the approved state implementation plan.

(95) [90] "PM2.5" means the maximum capacity of a stationary source to emit a pollutant under its physical and operational design, and [which] shall:

(a) Include air pollution control equipment and restrictions on the hours of operation or on the type or amount of material com- busted, stored, or processed, if the limitation or its effect on emissions is federally enforceable; and

(b) Not include secondary emissions.

(96) [90] "ppb" means parts per billion.

(97) [90] "ppm" means parts per million.

(98) [90] "ppm/(W/m²)" means parts per million (weight by weight).

(99) [90] "μg" means microgram.

(100) [90] "psia" means pounds per square inch absolute.

(101) [90] "psig" means pounds per square inch gage.

(102) [90] "Reconstruction" means the replacement of components of an existing affected facility to the extent that:

(a) The fixed capital cost of the new components exceeds fifty (50) percent of the fixed capital cost that would be required to construct a comparable entirely new facility.

(b) The estimated life of the affected facility after the replacement exceeds fifty (50) percent of the life of a comparable entirely new affected facility.

(c) The components being replaced cause or contribute to the emissions from the affected facility; and

(d) It is technologically and economically feasible to meet the applicable requirements of 401 KAR Chapters 50 to 65.


(104) [90] "Runoff" means the net percolation of water, either intermittent or continuous within the limits of good engineering practice, during which an emission sample is collected.

(105) [90] "Secondarily" means emissions that:

(a) Occur as a result of the construction or operation of a major stationary source or major modification; and

(b) Do not come from the major stationary source or major modification itself.

(106) [90] "Secondary emissions" means emissions that:

(a) Are specific, well defined, quantifiable, and impact the same general area as the stationary source modification that [which] causes the secondary emissions;

(b) Include emissions from an offsite support facility that [which] would not otherwise be constructed or increase its emissions as a result of the construction or operation of the major stationary source or major modification; and

(c) Do not include emissions that [which] come directly from a mobile source, including emissions from the tailpipe of a motor vehicle, a train, or a vessel.

(107) [90] "Severe nonattainment county" or "serious nonattainment area" means a county or portion of a county designated serious nonattainment in 401 KAR 51:010.

(108) [90] "Severe nonattainment county or" or "severe nonattainment area" means a county or portion of a county designated severe nonattainment in 401 KAR 51:010.

(109) [90] "Shutting down" means the cessation of an operation.

(110) [90] "SOx" means sulfur dioxide.

(111) [90] "Source" means one (1) or more affected facilities contained within a given contiguous property line, which means the property is separated only by a public thoroughfare, stream, or other right of way.

(112) [90] "State" means State.

(113) [90] "Stack or chimney" means a flue, conduit, or duct arranged to conduct emissions to the atmosphere.

(114) [90] "Standard" means an emission standard, a standard of performance, or an ambient air quality standard [as] promulgated [under] the administrative regulations of the Division for Air Quality or the emission control requirements necessary to comply with 401 KAR Chapter 51, of the administrative regulations of the Division for Air Quality.

(115) [90] "Standard conditions" means:

(a) For source measurements, [means] twenty (20) degrees Celsius (sixty-eight (68) degrees Fahrenheit) and a pressure of 760 mm Hg (29.22 in. of Hg);

(b) For [the-purpose-of] air quality determinations, [means] twenty-five (25) degrees Celsius (seventy-seven (77) degrees...
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Fahrenheit and a reference pressure of 760 mm Hg (29.92 in. of Hg).

(114) [(H3)] "Start-up" means the setting in operation of an affected facility.

(115) [(H4)] "State Implementation plan" or "SIP" means the most recently prepared plan or revision required by 42 U.S.C. 7410 that [which] has been approved by the U.S. EPA.

(116) [(H5)] "TAPPI" means Technical Association of the Pulp and Paper Industry.

(117) [(H6)] "Total suspended particulates" or "TSP" means particulate matter as measured by the method described in 40 C.F.R. Part 50, Appendix B (of 40 C.F.R. 60).

(118) [(H7)] "TPP" means ton per year.

(119) [(H8)] "TSS" means total suspended solids.

(120) "Uncombined water" means water that [which] can be separated from a compound by ordinary physical means and that [which] is not bound to a compound by internal molecular forces.

(121) "Urban county" means a county that [which] is a part of an urbanized area with a population greater than 200,000 based upon the 1980 census. If a portion of a county is a part of an urbanized area, then the entire county shall be classified as urban with respect to the administrative regulations of the Division for Air Quality.

(122) "Urbanized area" means an area defined as such by the U.S. Department of Commerce, Bureau of Census.

(123) "U.S. EPA" means United States Environmental Protection Agency.

(124) "VAT" means Universal Transverse Mercator.

(125) "Volatile organic compound" or "VOC" is defined in 40 C.F.R. 51.100(e).

(126) "Volatile organic compound" or "VOC" means an organic compound which participates in atmospheric photochemical reactions. This includes an organic compound other than the following compounds: methane; ethane; propane; isobutane; normal butane; isobutylene; ethylene; propylene; acetylene; hydrogen cyanide; carbon monoxide; carbon dioxide; carbon disulfide; formaldehyde; acetaldehyde; acrolein; hydrogen sulfide; methyl mercaptan; dimethyl disulfide; ethanethiol; ethylene dichloride; methylene chloride; trichloroethylene; tetrachloroethylene; tetrachloroethene; trichloroethene; chloroform; carbon tetrachloride; cyclohexane; hexane; benzene; toluene; ethylbenzene; xylene; cis-1,2-dichloroethylene; trans-1,2-dichloroethylene; cis-1,3-dichloroethylene; trans-1,3-dichloroethylene; trichloroethane; trichloroethene; perchloroethylene; carbon disulfide; carbon tetrachloride; napthalene; chrysene; fluorine; chlorine; and bromine.

Contact person: Chris Hall

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation defines terms used in the Kentucky administrative regulations contained in 401 KAR Chapter 63.

(b) The necessity of this administrative regulation: This administrative regulation defines terms used in the Kentucky administrative regulations contained in 401 KAR Chapter 63.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The definitions contained in this administrative regulation that have corresponding federal definitions have been clarified and formatted to conform to KRS Chapter 13A requirements, but are not more stringent or otherwise different than the corresponding federal definitions.

(d) How this administrative regulation currently assists or will assist in the effective administration of this administrative regulation: This administrative regulation defines terms used in the Kentucky administrative regulations contained in 401 KAR Chapter 63.

(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 amendment updates the definition of "volatile organic compound" or "VOC" to be consistent with the federal definition at 40 C.F.R. 51.100(e), amended at 69 FR 69298 (November 29, 2004) and 69 FR 69304 (November 29, 2004). The amendment also makes simple changes in the text of certain definitions to conform with current KRS Chapter 13A requirements.

(b) The necessity of this amendment to this administrative regulation: This amendment is necessary in order for the cabinet to ensure Kentucky's State Implementation Plan (SIP) and Title V Permitting Program meet the requirements of 42 U.S.C. 7401 to 7671.

(c) How the amendment conforms to the content of the authorizing statutes: The definitions contained in this amendment that have corresponding federal definitions have been clarified and formatted to conform to KRS Chapter 13A requirements, but are not more stringent or otherwise different than the corresponding federal definitions.

(d) How the amendment will assist in the effective administration of this regulatory act: This amendment defines terms used in the Kentucky administrative regulations contained in 401 KAR Chapter 63.

(3) List the type and number of individuals, businesses, organi-
lations, or state and local governments affected by this administrative regulation: This administrative regulation does not directly impact any individual, business, organization, or state or local government.

(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 directly impact any individual, business, organization, or state or local government.

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

(a) Initially: There are no known initial costs for implementation of this administrative regulation.

(b) On a continuing basis: There are no known continuing costs for 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: No funding is required.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in fees or funding will be necessary 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 any fees, nor does it directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? No. This administrative regulation imposes no requirements.

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department for Environmental Protection
Division for Air Quality
(Amendment)

401 KAR 65:001. Definitions for 401 KAR Chapter 65.


STATUTORY AUTHORITY: KRS 224.10-100(5)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100(5) requires the [Natural Resources and] Environmental and Public Protection Cabinet to promulgate administrative regulations for the prevention, abatement, and control of air pollution. This administrative regulation defines the terms used in 401 KAR Chapter 65. The definitions contained in this administrative regulation, which have corresponding federal definitions, are not more stringent nor otherwise different than the corresponding federal definitions.

Section 1. Definitions. (1) "Air contaminant" is defined in KRS 224.01-010(1).
(2) "Air pollutant" means air contaminant.
(3) "Air pollution" is defined in KRS 224.01-010(3).
(4) "Alternative method" means a method of sampling and analyzing for an air pollutant that is not a reference method or equivalent method, and [but which] has been demonstrated to the cabinet's and the U.S. EPA's satisfaction to produce adequate results for its determination of compliance.
(5) "Ambient air" means that portion of the atmosphere, external to buildings, to which the general public has access.
(6) "Ambient air quality standard" means a numerical expression of a specified concentration level for a particular air contaminant and the time averaging interval over which that concentration level is measured and is a goal to be achieved in a stated time through the application of appropriate preventive or control measures.
(7) "Anti-tampering-program" means an emission-control program that provides for inspection of vehicles to detect—removal or destruction of factory-installed emission-control equipment or devices in vehicles.
(8) "Antitampering—inspection" means a visual inspection conducted at the inspection station to detect the presence of tampering.
(9) "AOAC" means Association of Official Analytical Chemists.
(13) [14] "Automobile or truck" means a vehicle with at least four (4) wheels registered in the Commonwealth having a gross vehicle weight (GVW) of 18,000 pounds or less and licensed to operate upon the public highways for the purpose of transporting persons or property.
(14) [15] "BCD" means biochemical oxidant demand.
(16) [17] "BTU" means British Thermal Unit.
(18) [19] "C" means degree Celsius (centigrade).
(20) [21] "Cabinet" is defined in KRS 224.01-010.
(22) "CAR" means carbon dioxide.
(23) "Cat" means calorie.
(24) "Certificate of registration" means the document issued by county clerk pursuant to KRS Chapter 185 indicating that the owner or operator has properly registered the vehicle, or a document issued for that purpose from another state, territory, or country.
(25) "Certification period" means the period for which a compliance or exemption certificate (other than a permanent exemption certificate) is valid.
(26) "Chm" means cubic feet per minute.
(27) "CH₄" means methane.
(28) "CO" means carbon monoxide.
(29) "CO₂" means carbon dioxide.
(30) "COD" means chemical oxidant demand.
(31) "Compliance certificate" is defined in KRS 224.20-710(4).
(32) "Contractor" is defined in KRS 224.20-710(2).
(33) "Control system" is defined in KRS 224.20-710(3).
(34) "Director" means Director of the Division for Air Quality of the [Natural Resources and] Environmental and Public Protection Cabinet.
(35) "District" is defined in KRS 224.01-010.
(36) "dsf" means dry cubic feet at standard conditions.
(37) "dsfm" means dry cubic foot at standard conditions.
(38) "Dynamometer" means a device for measuring the horsepower of a motor vehicle engine.
(39) "EPA" means Environmental Protection Agency of the United States government.
(40) "Exempt compound" or "exempt solvent" means an organic compound listed in the definition of volatile organic compound as not participating in atmospheric photochemical reactions.
(41) "Exempt certificate" is defined in KRS 224.20-710(4).
(42) "Exhaust emission standard" or "emission standard" means the maximum allowable levels during a test of carbon monoxide, hydrocarbons, and the sum of carbon monoxide and carbon dioxide percentages appropriate for the age and type of vehicle tested.
(43) "Extreme nonattainment county" or "extreme nonattainment area" means a county or portion of a county designated extreme nonattainment for the one (1) hour national ambient air quality standard for ozone in 401 KAR 51:010.
(44) "FF" means degree Fahrenheit.
(45) "Fleet" means a group of vehicles owned, leased, or operated by a person who has the responsibility of obtaining the certificates of registration for the vehicles.
(46) "Fleet operator" means the person who has the responsibility of obtaining the certificates of registration for fleet vehicles.
"m" means foot or foot.

"g" means gram.

"gal" means gallon.

"gr" means grain.

"cubic weight" or "GWW" means the manufacturer's gross weight rating of a vehicle.

"HC" means hydrochloric acid.

"Hg" means mercury.

"HF" means hydrogen fluoride.

"hr" means hour.

"Hydrocarbon" means an organic compound consisting predominantly of carbon and hydrogen.

"H2S" means hydrogen sulfide.

"H2SO4" means sulfuric acid.

"m" means inch.

"Inpection station" is defined in KRS 224.20-710(6).

"J" means joule.

"Kg" means kilogram.

"l" means liter.

"lb" means pound.

"m" means meter.

"Measurable improvement" means any improvement toward achieving the emission or functional standard when compared to the measured results obtained in the initial test.

"mm" means cubic meter.

"Marginal nonattainment area" means a county or portion of a county designated marginal nonattainment for the one (1) hour national ambient air quality standard for ozone in 401 KAR 51:010.

"ug" means microgram.

"mm" means minute.

"mg" means milligram.

"min" means minute.

"mp" means megajoules.

"Mm" means million.

"mm" means millimeter.

"MM" means million.

"mo" means month.

"Moderate nonattainment area" means a county or portion of a county designated moderate nonattainment for the one (1) hour national ambient air quality standard for ozone in 401 KAR 51:010.

"Nitrogen oxides" means all oxides of nitrogen except nitrous oxide, as measured by test methods specified by the cabinet.

"NO" means nitric oxide.

"NO2" means nitrogen dioxide.

"O2" means oxygen.

"oz" means ounce.

"Opacity" means the degree to which emissions reduce the transmission of light and obscure the view of an object in the background.

"Opacity standard" means the maximum allowable opacity for a diesel vehicle during emission standard testing.

"Observer" means a person who owns, leases, or operates a vehicle.

"Owner" is defined in KRS 186.010(7).

"oz" means ounce.

"Particulate matter" means a material, except uncombined water, that [which] exists in a finely divided form as a liquid or as a solid as measured by the appropriate approved test method.

"Particulate matter emissions" means, except as used in 40 C.F.R. Part 60, all finely divided solid or liquid material, other than uncombined water, emitted to the ambient air as measured by applicable reference methods, or an equivalent or alternative method specified in 40 C.F.R. Chapter 1, or by a test method specified in the approved state implementation plan.

"Person" is defined in KRS 224.01-010(17).
not to determine compliance with the allowable exhaust emission standards, the functional standards, and the antistomper standards.

111. "Testing period" means a three (3)-month period of time for testing a vehicle that is subject to the requirements in 401 KAR 65-010. This period begins biennially, ninety (90) days prior to the date a vehicle’s registration expires, occurring during applicable odd or even numbered years.

112. "Total suspended particulates (particulate)" or "TSP" means particulate matter as measured by the method described in 40 C.F.R. Part 50, Appendix B.

113. "(tfr)" means ton per year.

114. "(tsm)" means total suspended solids.

115. "(tumb)" means uncombined water means water which can be separated from a compound by ordinary physical means and which is not bound to a compound by internal molecular forces.

116. "Urban County" means a county which is a part of an urbanized area with a population greater than 200,000 based upon the 1980 census. If a portion of a county is a part of an urbanized area, then the entire county shall be classified as urban with respect to the administrative regulations for Air Quality.

117. "(za)" means yard.

118. "Vehicle emission control program" is defined in KRS 224.20-710(6).

119. "Vehicle identification number" or "VIN" means the number assigned to the vehicle by the vehicle’s manufacturer or the assigned or replacement vehicle identification number approved by the Department of Vehicle Registration pursuant to KRS Chapter 486.

120. "Vehicle inspection maintenance program" means an emission control program implemented in a program area.

121. "Vehicle inspection and maintenance program" means an emission control program implemented in a program area.

122. "Vehicle inspection and repair program" means the form issued to the owner or operator of a vehicle which fails the compliance test.

123. "Volatile organic compound" or "VOC" means an organic compound that participates in atmospheric photochemical reactions. This includes an organic compound other than the following compounds: methanol; ethane; carbon monoxide; carbon dioxide; carbonic acid; metallic carbides or carbonates, ammonium carbonate; methane chloride; 1,1,1-trichloroethane (methyl chloroform); trichloroethylenes (CFC-11); dichlorodifluoromethane (CFC-12); chlorodifluoromethane (HCFC-22); trifluoromethane (HCFC-134); 1,1,2,2-tetrafluoroethane (CFC-113); 1,1,2,2-tetrafluoroethane (CFC-114); chloroform (CFC-115); 1,1,1,2-tetrafluoroethane (CFC-124a); 1,1,2,2,3,3-hexafluoropropene (HFC-245fa); 1,1,1,2,2,3,3-hexafluoropropane (HFC-246ea); 1,1,1,2,2,3,3-pentafluorobutane (HFC-365mfk); chloroform (HCFC-22); 1,2,2-dichloro-1,1,1-trifluoroethane (HCFC-123a); 1,1,1,2,2,3,3,4,4-nonanefluorobutane (HCFC-123b); 1,1,2,2-dichloro-1,1,1-trifluoroethane (HCFC-124b); 2-chloro-1,1,1,2-tetrafluoroethane (HCFC-124c); 1,2,2-pentafluoropropane (HFC-125a); 1,2,2,2-tetrafluoroethene (HFC-134a); 1,1,1,2,2,3,3-pentafluoropropane (HFC-245ca); 1,1,1,2,2,3,3-hexafluoropropene (HFC-246fa); 1,1,1,2,2,3,3-hexafluoropropane (HFC-246ea); 1,1,2,2-difluoropropene (HFC-246ca); 1,1,1,2,2,3,3-pentafluoropropane (HFC-246ea).
tion at 40 C.F.R. 51.100(s), amended at 69 FR 69298 (November 29, 2004) and 69 FR 69304 (November 29, 2004). The amendment also makes simple changes in the text of certain definitions to conform with current KRS Chapter 13A requirements.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary in order for the Cabinet to ensure Kentucky's State Implementation Plan (SIP) and Title V Permitting Program continue to meet the requirements of 42 U.S.C. 7401 to 7671q.

(c) How the amendment conforms to the content of the authorizing statutes: The definitions contained in this amendment that have corresponding federal definitions have been clarified and formatted to conform to KRS Chapter 13A requirements, but are not more stringent or otherwise different than the corresponding federal definitions.

(d) How the amendment will assist in the effective administration of statutes: This amendment defines terms used in the Kentucky administrative regulations contained in 401 KAR Chapter 65.

(2) I list the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation does not directly impact any individual, business, organization, or state or local government.

(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 directly impact any individual, business, organization, or state or local government.

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

(a) Initially, there are no known initial costs for implementation of this administrative regulation.

(b) On a continuing basis: There are no known continuing costs for 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? No funding is required.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in fees or funding will be necessary 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 any fees, nor does it directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? No. This administrative regulation imposes no requirements.

JUSTICE AND PUBLIC SAFETY CABINET
Department of Corrections
(Amendment)

501 KAR 6:999. Corrections secured policies and procedures.

RELATES TO: KRS Chapters 196, 197, 439

STATUTORY AUTHORITY: KRS 196.035, 197.020, 439.470, 439.550, 439 640

NECESSITY, FUNCTION, AND CONFORMITY: KRS 196.035, 197.020, 439.470, 439.550, and 439.640 authorize the Justice and Public Safety Cabinet and Department of Corrections to promulgate administrative regulations necessary and suitable for the proper administration of the department or of its divisions. These policies and procedures are incorporated by reference in order to comply with the accreditation standards of the American Correctional Association. This administrative regulation establishes the secured policies and procedures for the Department of Corrections.

Section 1. Incorporation by Reference. (1) "Department of Corrections Secured Policies and Procedures, June 14, 2006[24/1306]", are incorporated by reference. Secured Policies and Procedures include:

BCC 08-04-02 Immediate Release of Inmates from Locked Areas (Amended 1/12/05)
BCC 09-04-01 Construction Crew Entry, Exit and Regulations (Amended 1/12/05)
BCC 09-04-02 Contractor Entry and Exit (Amended 1/12/05)
BCC 09-05-01 Key Control (Amended 1/12/05)
BCC 09-06-02 Transportation to Courts (Amended 1/12/05)
BCC 09-07-01 Drug Abuse and Intoxicants Testing (Amended 1/12/05)
BCC 09-08-01 Weapons and Related Security Device Control (Amended 1/12/05)
BCC 09-08-02 Use of Restrains (Amended 1/12/05)
BCC 09-17-01 Institutional Supervisor Inspections (Amended 1/12/05)
BCC 09-20-01 Inmate Death (Amended 1/12/05)
BCC 09-21-01 Tool Control (Amended 1/12/05)
BCC 09-22-01 Emergency Power and Communication System
BCFC 08-01-01 Bell County Forestry Camp's Institutional Emergency Plan
BCFC 08-09-02 OSHA Hazard Communication Program
BCFC 08-10-01 Bell County Forestry Camp Emergency Response Team
BCFC 09-07-01 Key Control
BCFC 09-11-01 Guidelines for Contractors
BCFC 09-15-01 Court Procedure [Procedural] and Regulation of Inmate Management (Amended 12/14/05)
BCFC 09-16-01 Inmate Death
BCFC 09-19-01 Tool Control (Amended 12/14/05)
BCFC 09-20-01 Weapons, Chemical Agents, and Related Security Device Control
BCFC 09-21-01 Transportation of Inmates
CPP 5.3 Critical Incident Planning (Amended 2/13/06)
CPP 8.4 Critical Incident Management (Amended 2/13/06)
CPR 8.5 Emergency Squads (Amended 1/12/05)
CPP 9.1 Use of Force and Mechanical Restraints (Amended 6/14/05)
CPP 9.3 Security Threat Groups (Amended 12/14/05)
CPP 9.7 Storage, Issue, and Use of Weapons Including Chemical Agents (Amended 1/12/05)
CPP 9.9 Transportation of Offenders (Amended 1/12/05)
CPR 9.10 Security Inspections (Amended 1/12/05)
CPP 9.11 Tool Control (Amended 12/14/05)
FCDC 09-01-02 Institutional Entry and Exit Surveillance and Perimeter Security Procedures
FCDC 09-01-03 Firearms, Mechanical Restraints, and Emergency Equipment
FCDC 09-33-01 Control and Accountability of Flammable, Toxic, Caustic and Other Hazardous Materials
FCDC 09-37-01 Guidelines for Contract and Construction Personnel
FCDC 09-09-01 Tool Control
FCDC 09-12-01 Key Control
FCDC 09-14-01 Count Procedures
FCDC 09-20-01 Collection, Preservation, and Identification of Physical Evidence
GRCC 08-03-01 Escape Plan (Amended 1/12/05)
GRCC 08-05-01 Emergency Squad: Selection, Training and Evaluation (Amended 12/1/05)
GRCC 08-07-01 Natural Disaster or Earthquake (Amended 12/1/05)
GRCC 09-05-01 Construction Crew Entry and Exit Guidelines (Amended 1/12/05)
GRCC 09-06-01 Entry and Exit Procedures (Amended 1/12/05)
GRCC 09-07-01 Institutional Inspections (Amended 1/12/05)
GRCC 09-08-01 Disposition of Weapons, Ammunition and Chemical Agents (Amended 1/12/05)
GRCC 09-09-01 Contraband Control; Collection, Preservation, Disposition of Contraband and Identification of Physical Evidence (Amended 1/12/05)
GRCC 09-10-01 Emergency Release from Locked Areas
(Amended 6/14/06)
LSCC 09-07-01 Institutional Inspections (Added 6/14/06)
LSCC 09-08-01 Issuance of Weapons Ammunition and Chemical Agents (Added 6/14/06)
LSCC 09-09-01 Contraband Control, Collection, Preservation, and Disposition of Physical Evidence (Added 6/14/06)

LSCC 09-11-01 Tool and Equipment Control (Added 6/14/06)
LSCC 09-12-01 Key Control (Added 6/14/06)
LSCC 09-15-01 Radio Assignment (Added 6/14/06)
NCT 08-05-04 Storage of Flammable and Dangerous Chemicals and Their Use (Amended 1/12/05)
NCT 09-01-02 Escape By Air
NCT 09-02-01 Regulation of Inmate Movement
NCT 09-04-01 Construction and Service Personnel (Amended 1/12/05)

NCT 09-05-01 Count Procedure and Documentation (Amended 1/12/05)
NCT 09-08-01 Issuance and Use of Institution Portable Radios (Amended 1/12/05)
NCT 09-09-01 Transportation of Inmates (Amended 1/12/05)
NCT 09-10-01 Use of Force; Prohibiting Personal Abuse and Corporal Punishment
NCT 09-10-02 Use of Physical Restraints (Amended 1/12/05)
NCT 09-11-01 Tool Control
NCT 09-13-01 Procedure for Operation in the event of Dense Fog and Loss of Power
NCT 09-17-01 Maintaining Penmeter Security (Amended 1/12/05)
NCT 09-17-02 Penmeter Security Check
NCT 09-18-01 Key Control (Amended 1/12/05)
NCT 09-19-01 Electrical Disabling Devices (Amended 1/12/05)
NCT 09-20-01 Security Inspection Plan
NCT 09-21-01 Inclement Weather Operations
NCT 09-25-01 Weapons and Related Security Device Control (Amended 1/12/05)
NCT 09-25-02 Use of Chemical Agents (Amended 1/12/05)
NCT 09-28-01 Personal Firearms Owned by Employees Residing on Institutional Property
NCT 09-30-01 Security Check-In List Procedures (Added 1/12/05)

RCC 08-03-01 Escape Procedures (Amended 1/12/05)
RCC 08-08-01 Control and Use of Flammable, Toxic, and Caustic Materials (Amended 1/12/05)
RCC 08-09-01 Institutional Emergency Plan (Amended 1/12/05)
RCC 09-01-01 Establishment of Security Posts (Amended 1/12/05)
RCC 09-01-02 Mandatory Security Post Coverage (Amended 1/12/05)
RCC 09-02-01 Security Activity Logs (Amended 1/12/05)
RCC 09-03-01 Institutional Security Inspections (Amended 1/12/05)
RCC 09-04-03 Duties and Responsibilities of the Fire and Safety Officer
RCC 09-05-01 Entry and Exit to Institution (Amended 1/12/05)
RCC 09-06-01 Search Policy/Disposition of Contraband (Amended 1/12/05)
RCC 09-06-02 Collection, Preservation, and Identification of Physical Evidence (Amended 1/12/05)
RCC 09-06-04 Disposition of Contraband from Outside Institutional Perimeter (Amended 1/12/05)
RCC 09-07-01 Key Control (Amended 1/12/05)
RCC 09-11-01 Guidelines for Contractors (Amended 1/12/05)
RCC 09-12-01 Outside Hospital Security (Amended 1/12/05)
RCC 09-13-01 Outside Details and Farm Details (Amended 1/12/05)
RCC 09-14-01 Restricted Areas (Amended 1/12/05)
RCC 09-14-02 Escape By Air
RCC 09-15-02 Security and Records Office Documentation for Placement and Movement of Inmates (Amended 1/12/05)

(2) There shall not be a public hearing on these policies and procedures as they are secured policies under the provisions of KRS 197.025(6) which states that these policies shall not be accessible to the public or inmates.

JOHN D. REES, Commissioner
APPROVED BY AGENCY: June 1, 2006
FILED WITH LRC: June 14, 2006 at 4 p.m.
CONTACT PERSON: Amy V. Barker, Justice and Public Safety Cabinet, Office of Legal Services, P.O. Box 2400, Frankfort, Kentucky 40602-2400, phone (502) 564-4001 ext. 335 or 333, fax (502) 564-5229.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT
Contact Person: Trena Rogers
(1) Provide a brief summary of:
(a) What this administrative regulation does: This regulation incorporates by reference the secured policies and procedures governing the Department of Corrections and guiding the duties and responsibilities of employees.
(b) The necessity of this administrative regulation: To conform to the requirements of KRS 196.035, 197.020, 197.025(6) and to meet ACA requirements.
(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation governs the operations of
the Department of Corrections through secured procedures.

d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: By providing clear and concise direction and information to corrections employees as to their duties and responsibilities.

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

(a) How the amendment will change this existing administrative regulation: The amendments bring corrections in compliance with ACA Standards, show compliance with current practices, and show actual practice of the penal institutions.

(b) The necessity of the amendment to this administrative regulation: To conform to the requirements of KRS 196.035; 197.025; and, 197.025(5).

(c) How the amendment conforms to the content of the authorizing statutes: It permits the commissioner or his authorized representative to implement or amend practices or procedures to ensure the safe and efficient operation of the Kentucky Department of Corrections.

(d) How the amendment will assist in the effective administration of the statutes: This will assist in informing staff on the effective and on-going management of the penal institutions.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This affects the Kentucky Department of Corrections 3,600 employees and 17,609 inmates, and all visitors to state correctional institutions.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: Employees will have to learn the changes in the procedures.

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

(a) Initially: None

(b) On a continuing basis: None

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: None

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change, if it is an amendment: None

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

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

JUSTICE AND PUBLIC SAFETY
Department of State Police
Driver Testing Branch
(Amendment)


RELATES TO: KRS 281A.160(4) (49), 49 C.F.R. 383.75

STATUTORY AUTHORITY: KRS 281A.160(5) (44), (8)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 281A.160(5) (44) and (8) require the Kentucky State Police to promulgate administrative regulations [establishing procedures to authorize a third-party to administer the skills test required for third-party CDL skills test examiners [commercial driver's license]. This administrative regulation establishes the minimum qualifications, mandatory training requirements, and prohibited conflicts of interest for [procedures for the authorization of third-party CDL skills test examiners and the testing they administer].

Section 1. Definitions. (1) "AAMVA" means the American As-

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sociation of Motor Vehicle Administrators.

(2) "CDL" means a commercial driver license.

(3) "DOE" means the Kentucky Department of Education.

(4) "Family member" means the current and, if any, former spouse of a third-party skills test examiner, or a person within the third degree of relationship to any of them, or the spouse of that person.

(5) "FMCSA" means the Federal Motor Carrier Safety Adminis-

tration.

(6) "KSP" means the Kentucky State Police.

(7) "MOA" means memorandum of agreement.

(8) "Third-party CDL skills test examiner" means an employee of the DOE who, pursuant to a MOA entered into between KSP and DOE, administers CDL skills tests to other DOE employees seeking a CDL to operate DOE-owned school buses, and persons retained by KSP under contractual agreement to administer CDL skills test to CDL applicants.

Section 2. Third-Party CDL Skills Test Examiner Minimum Qualifications. DOE employees or persons seeking to enter a contractual agreement with KSP to act as a third-party CDL skills test examiner shall satisfy the following minimum qualifications for initial appointment and retention:

(1) Shall not have accrued more than six (6) demerit points on their driving record;

(2) Shall possess a high school diploma or GED;

(3) Shall, if a DOE employee, possess a Class A or B CDL with

passenger and school endorsements;

(4) Shall, if a third-party contract examiner, possess:

(a) A Class A CDL with all available endorsements; and

(b) Previous experience as a CDL skills test examiner or two

(2) years experience within the past five (5) years as a licensed

Class A or B CDL operator in good standing;

(5) Shall maintain the CDL licensed with all endorsements

required by subsections (3) and (4) of this section;

(6) Shall pass test one (1) complete battery of forms A, B, or C

of the CDL knowledge test administered by KSP. These tests shall

be retaken every four (4) years;

(7) Shall pass the CDL skills test administered by KSP in the

type of commercial vehicle in which they will test CDL applicants.

These CDL skills test shall be retaken every four (4) years at the
direction of KSP and;

(8) Shall give written consent to KSP to conduct a Kentucky

criminal history records check, and further give written consent to an updated Kentucky criminal history records check being performed every four (4) years. Persons who are determined to have felony or misdemeanor convictions involving violence, dishonesty, or more than one (1) conviction may be rejected for appointment, or have their appointment as a third-party contract examiner, rescinded based upon a case-by-case discretionary consideration of the facts and circumstances surrounding the conviction.

Section 3. Third-Party CDL Skills Test Examiner Mandatory Training Requirements. (1)(a) Except as provided in paragraph (b) of this subsection, persons appointed as a third-party CDL skills test examiner shall successfully complete the initial fourty (40) hours of CDL skills test examiner training conducted by KSP and pass all exams associated with the training. This training shall be approved by AAMVA and FMCSA. Certificates of completion shall be issued by KSP upon successful completion of this training.

(b) Persons who have previously administered CDL skills tests for KSP and who have completed this training within the past two (2) years shall be waived from this training requirement.

(2) Third-party skills test examiners shall attend and successful-

fully complete an annual ten (10) hour In-service training con-

ducted by KSP.

(3) Third-party skills test examiners shall participate in the

certification process for CDL examiners administered through

AAMVA. This certification shall be sought and maintained through

KSP. The test examiner shall be required to complete third-party skills test examiner to pay all fees charged by AAMVA to obtain and maintain this certification. Failure to obtain this certification within two (2) years from the date of appointment as a third-party CDL skills test examiner shall be grounds for revocation of appointment.
(4) Third-party CDL skills test examiners shall be issued identification cards and a unique examiner identification number that identifies them as a CDL examiner. The identification card shall be carried and produced upon request of KSP. The examiner identification number shall be recorded by the third-party CDL skills test examiner on all CDL examination records and related documents required by KSP to be completed by the examiner in the course of their duties.

(5) Third-party CDL skills test examiners shall conduct CDL skills tests in a uniform approved by KSP. KSP shall not be responsible for the purchase or maintenance costs for this uniform.

Section 4. Additional CDL Skills Test Requirements. (1) Third-party skills tests examiners shall comply with 49 C.F.R. 383.75, Subparts G and H.

(2) Third-party CDL skills test examiners shall, without deviation, administer the CDL skills test in accordance with the KSP Driver Testing Branch CDL Examiners Manual.

(3) Third-party CDL skills test examiners shall record the CDL applicant’s skills test scores.

(4) Third-party CDL skills test examiners shall be required to keep and maintain files pertaining to CDL tests that they have administered for a period of two (2) years. These records shall be subject to inspection by KSP or any state or federal entity performing an audit of these records.

(5) Third-party test examiners shall be subject annually to at least two (2) character tests performed by an official designated by KSP, that shall ride with the examiner and observe the CDL skills test as it is given to ensure the examiner is administering the test in full compliance with all federal and state laws and regulations.

(6) Third-party CDL skills test examiners shall be subject to “select tests” conducted by KSP. These tests shall consist of the CDL applicant being retested not later than two (2) days following the original test administered by the third-party CDL skills test examiner, utilizing commercial vehicle equipment provided by or on the behalf of the CDL skills test examiner at no cost to KSP. The test results shall then be compared to verify that there are no deficiencies with the original test given by the third-party CDL skills test examiner. If the two (2) test scores differ, making a difference as to whether the CDL applicant passed or failed, the score given by KSP on its retest shall be entered into the official record as the actual score of the CDL applicant.

(7) Third-party CDL skills test examiners shall be subject to random inspection testing by KSP or FMCSA. These tests may consist of the third-party CDL skills test examiner administering a CDL skills test to a CDL applicant who is an agent of KSP or FMCSA without the examiner’s knowledge of the individual’s true identity.

(8) Third-party CDL examiners shall be subject to monitoring of their testing processes by KSP or FMCSA to ensure compliance with all federal and state laws and administrative regulations.

Section 5. Prohibited Conflicts of Interest. (1) A third-party CDL skills test examiner shall not administer a CDL skills test to a CDL applicant who is a family member or who has commercial truck driving instruction training at a commercial truck driving school that is owned or operated by a family member.

(2) A third-party CDL skills test examiner shall not administer a CDL skills test to a CDL applicant whom whom the examiner is involved in a dating, romantic, or other type of intimate personal relationship, regardless of whether the examiner and applicant share a residence.

(3) A third-party CDL skills test examiner who administers CDL skills tests under a contractual agreement with KSP and who is a present or former commercial truck driving school employee, shall not administer third-party CDL skills tests to any CDL applicant who has attended a commercial truck driving school as a student of the examiner’s agreement or former employer.

(4) Once a third-party CDL skills test examiner has ceased employment with a commercial truck driving school for at least one (1) year, the examiner may be authorized to administer CDL skills tests to CDL applicants who are commercial truck driving students of their former employer, if KSP, in its sole discretion, determines that the examiner can administer the exam in a fair, unbiased, and legal manner as proscribed by the FMCSA, 49 C.F.R. Parts 383 and 384.

Section 6. Revocation of Appointment. Failure to comply with the requirements of this administrative regulation shall be grounds for revocation of appointment as a third-party CDL skills test examiner by KSP and shall further constitute good cause for termination of KSP’s contractual obligations with examiners who administer CDL skills test pursuant to contract.

Section 7. Third-Party CDL Skills Test Examiner Records. All records pertaining to the selection and appointment of third-party CDL skills test examiners shall be maintained by KSP. These records shall be reviewed prior to renewing CDL third-party CDL skills test examiner appointment, whether by Memorandum of Agreement with DOE or contractual agreement with other third-party CDL skills test examiners. Third-party CDL skills test examiner records shall contain the following information:

(1) Copy of qualification questionnaire containing photo of individual;
(2) Copy of DOE Memorandum of Agreement (if applicable);
(3) Copy of criminal history and driving record;
(4) All other documents related to the qualification and requirements of the examiner and
(5) Any investigations, drug testing, and covert testing, or monitoring conducted by KSP concerning the third-party CDL skills test examiner.

Section 8. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "KSP Driver Testing Branch CDL Examiners Manual", Version 2.0, The manual is produced by AAMVA and
(b) “Time-limited—relationship” means the condition of the parties to a transaction in which:

(a) Each has independent interest;
(b) The parties have not had a business-employment relationship within the past twelve (12) months; and
(c) The parties are not related to each other such as persons who are married, ancestors, descendants, or brothers or sisters—including blood relationships of either the whole or half blood—without regard to legitimacy, relationship of parent and child by adoption, relationship of step-parent and step-child, and those relationships of the second degree.

(2) "CDL" means a commercial driver license.
(3) "Family member" means—spouse, including a former spouse; parents, parents-in-law, and siblings; stepparent, stepchild, and step-siblings; and any other dependent relationship.

(4) "KCTCS" means the Kentucky Community and Technical College System.

Section 2. Application for Authorization. Examiners for the skills test portion for a commercial driver license (CDL) shall consist of employees of the Kentucky State Police, employees of the Kentucky Community and Technical College System (KCTCS) for truck driving schools, and employees of the Department of Education, Division of Pupil Transportation for school bus drivers. The application process shall be as follows:

(1) For school bus examiners. Examiners shall be selected from certified school bus driver trainers and recommended to the Kentucky State Police Driver Testing Branch by the Division of Pupil Transportation.

(2) For KCTCS examiners. Application shall be made to KCTCS and selection approved by the Kentucky State Police Driver Testing Branch. Applicants for examiners in the KCTCS program shall have an arm’s length relationship with any owner, officer, or employee of any program offering commercial truck driving under the KCTCS or a proprietary school licensed under...
KRS Chapter 165A
(2) To be qualified as a commercial driver-licensure third-party examiner, all applicants shall not accrue more than six (5) demerit points on their driving record and shall have the following:
(a) Examiners shall be required to have a high school diploma or GED.
(b) Examiners shall have a commercial driver's license for the vehicle class of which they will be testing and all available endorsements, excluding the passenger endorsement, unless the examiner will be testing those applicants seeking a passenger endorsement. Maintenance of license shall be the responsibility of each third-party CDL examiner.
(c) Examiners shall pass on (1) complete battery of forms A, B, and C of the commercial driver's license knowledge tests administered by the Kentucky State Police Driver-Testing Branch. These tests shall be retaken every four (4) years at the direction of the Kentucky State Police Driver-Testing Branch.
(d) Examiners shall pass the skills test administered by the Kentucky State Police Driver-Testing Branch in a vehicle in which they will test applicants. This test shall be retaken every four (4) years at the direction of the Kentucky State Police.
(e) Examiners shall have a complete fingerprint based criminal history check performed every four (4) years at the direction of the Kentucky State Police.
(f) The Kentucky State Police Driver-Testing Branch shall approve examiners. A criminal history check revealing a lack of good moral character, dishonesty or aenity conviction shall be considered grounds for disqualification from the CDL Examiners Program. Examiners are referred for investigation and consideration by the Kentucky State Police.
(g) In breaking the determination of good moral character under the section, the Kentucky State Police shall consider only the following:
(i) If the applicant has been convicted of a crime;
(ii) The age of the applicant at the time any criminal conviction was entered;
(iii) The length of time that has elapsed since the applicant's last criminal conviction; and
(iv) The relationship of any crime convicted to the ability of the applicant to be a third-party CDL examiner.

Section 3. Issuance of Authorization. Upon selection for commercial-driver-licensure examiner, examiners shall be required to do the following:
(1) Examiners shall successfully complete the initial forty (40) hours of CDL Examiner Training conducted by the Kentucky State Police and pass all examinations associated with the training unless waived by the Kentucky State Police due to prior training and experience. This training shall be approved by the American Association of Motor Vehicle Administrators (AAMVA) and the Federal Motor Carrier Safety Administration (FMCSA).
(2) Examiners shall attend and successfully complete a yearly ten (10) hour in-convoy training conducted by the Kentucky State Police.
(3) Examiners shall participate in the certification process for certified-commercial-examiner through the American Association of Motor Vehicle Administrators (AAMVA). Certification shall be sought and maintained through the Kentucky State Police Driver-Testing Branch for certification with AAMVA. This section shall apply when the AAMVA certification program is implemented.
(4) The Kentucky State Police Driver-Testing Branch shall enter into a memorandum of authorization and agreement with KCTCS as to conditions and requirements to individual third-party CDL examiners. This memorandum of agreement shall be terminated by the Kentucky State Police for just cause based on an investigation by the Kentucky State Police and finding that the agreement has been violated.
(5) Examiners shall be issued certificate of completion of the required forty (40) hours of examiner-training by the Kentucky State Police Driver-Testing Branch.
(6) Examiners shall be issued identification cards that identify them as commercial-licensure examiners, which shall be carried and produced upon request of the Kentucky State Police or its designee.
(7) Examiners shall be issued a CDL third-party examiner number, which shall be used on reports produced by the examiner and the Kentucky State Police Driver-Testing Branch.
(8) Examiners shall have readily recognizable identification on their uniform that identifies them as a commercial driver-licensure examiner and their name shall be on the uniform to readily identify the examiner. The identification shall not associate the examiner with being an employee of the Kentucky State Police. A uniform committee consisting of members of KCTCS and KSP shall be implemented to establish the uniform requirements for the examiners.

Section 4. Skills Test Requirements. Persons authorized to administer commercial driver-licensure skills tests shall be subject to the following additional requirements:
(1) Administration of skills tests shall comply with 49 C.F.R. 283.75, Subparts C and H of the Department of Transportation Federal Highway Administration Federal Motor Carriers Safety Regulations.
(2) Examiners administering the skills tests shall, without deviation administer the test in accordance with the Kentucky State Police Driver-Testing Branch CDL Examiners Manual. The manual is produced by the American Association of Motor Vehicle Administrators (AAMVA) and is incorporated by reference.
(3) Examiners administering the skills portion of CDL skill tests shall record the score on a CDL Skills Test Reporting Form and shall, immediately following the test, call the Driver-Testing Branch of the Kentucky State Police and report the score given to the person tested. The CDL Skills Test Reporting Form is incorporated by reference.
(4) Examiners shall be required to keep and maintain files pertaining to CDL tests that they have administered for a period of two (2) years. These records shall be subject to inspection by the Kentucky State Police or its designee.
(5) Examiners shall be subject to at least two (2) check rides annually by a designee of the Kentucky State Police Driver-Testing Branch who shall ride with the examiner and observe the test as it is given to ensure compliance with all federal and state laws and administrative regulations.
(6) Examiners shall be subject to "Select Tests" conducted by the Kentucky State Police. These tests shall consist of the applicant being selected not later than one (1) week following the original tests of the third-party CDL examiner, utilizing equipment provided by the commercial truck driving school at no cost to the Kentucky State Police. The test results from each test shall then be compared to verify that there are no deficiencies in the original tests given by the third-party examiner. Should the two (2) test scores differ, making a difference whether the applicant passed or failed, the score given by the Kentucky State Police shall be entered into the official record as the official score of the Kentucky State Police.
(7) Examiners shall be subject to testing by the Kentucky State Police or the Federal Motor Carrier Safety Administration. These tests may consist of the third party CDL examiner testing an individual who is an agent of the Kentucky State Police or the FMCSA without the examiners knowledge of the individual's true identity.
(8) Third-party CDL examiners shall be subject to monitoring of their testing processes by the Kentucky State Police or the Federal Motor Carrier Safety Administration to ensure compliance with all federal and state laws and administrative regulations.

Section 5. (1) A third-party examiner shall not administer CDL skills tests to any present or former family member or at any school owned or operated by a family member or former family member.
(2) An ex-relationship. A present or former trucking school employee, whether proprietary or otherwise, shall not administer third-party CDL skills examinations to any student of their present or former employer. Once a CDL school employee has been unenrolled by a trucking school for at least one (1) year, they may then be authorized to administer third-party CDL skills examinations to students of their former employer. It is believed that they can do so in a fair, unbiased and logical manner as prescribed by the Federal Motor Carrier Safety Administration regulations, 49 C.F.R. Parts 383 and 384. KCTCS third-party examiners may administer CDL skills tests at other KCTCS locations where they have not worked as an employee in the last year.
Section 6. All students who attend a Kentucky professional truck driving school, licensed by the Kentucky Board for Proprietary Education, shall take their commercial driver license skills test from a licensed third-party examiner employed by the Kentucky Community and Technical College System. KCTCS may charge a fee for administering the test. In an emergency situation, KCTCS may request that the Kentucky State Police administer a CDL test, or tests, in lieu of a KCTCS employee, to a student of a professional truck driving school.

Section 7. Processing and Filing. All files pertaining to application or recommendation to be a commercial driver license examiner shall be maintained by the Kentucky State Police Driver Testing-Brancl. These files shall be reviewed at each renewall period, prior to renewing agreements and authorization. Files of each examiner shall contain the following:

- 1. Copy of application containing photo of individual.
- 2. Copy of memorandum of authorization and agreement.
- 3. Copy of criminal history and driving record.
- 4. All other documents related to the qualification and requirements of the examiner.
- 5. Any investigations, select testing and overt testing or monitoring conducted on the Kentucky State Police on the CDL examiner.

Section 8. Incorporation by Reference. (1) The following material is incorporated by reference:

- 1. Kentucky State Police Driver Testing Branch CDL Examiner Manual, Version 2.0. The manual is produced by the American Association of Motor Vehicle Administrators (AAMVA);

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Custodian of Records, Kentucky State Police Headquarters, 919 Versailles Road, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

BG NORMAN E. ARFLACK, Secretary
MARK MILLER, Commissioner

APPROVED BY AGENCY: June 13, 2006
FILED WITH LRC: June 15, 2006 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Thursday, July 27, 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 the 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 July 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) 895-6345, fax (502) 573-1636.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Roger G. Wright

(a) Provide a brief summary of:

- (b) The necessity of this administrative regulation: HB707 2006 GA and signed into law on April 22, 2006, amends KRS 281A.160(5), and requires the Department of State Police to promulgate administrative regulations to establish procedures under which third-party CDL skills test examiners may provide CDL skills test to CDL applicants.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation complies with KRS 281A.160 in that it establishes that third-party CDL skill test examiners must administer the CDL skills test in the same manner as KSP employee CDL skills test examiners and further must comply with federal regulations relating to these tests. This regulation further outlines prohibited conflicts of interest as required by KRS 281A.160(5).

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation establishes the minimum qualifications, required training, and prohibited conflicts of interest for third-party CDL skills test examiners.

(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: HB707, signed into law on April 22, 2006, provides the Department of State Police with 90 days to amend the existing regulation to authorize the department to hire third-party examiners other than the limited number of third-parties who had been previously authorized to provide CDL skills test examiner services to the department under KRS 281A.160(5)(b), and require a report to the General Assembly.

(b) The necessity of the amendment to this administrative regulation: Prior to its 2006 amendment, KRS 281A.160 did not authorize the Department of State Police to hire third-party CDL skills test examiners who did not offer a commercial truck driving course of instruction through the Kentucky Community and Technical College System or who offered such a program through a proprietary school licensed under KRS Chapter 166A. The amended statute and regulation will allow the department to utilize additional qualified individuals to meet a manpower shortage the department is experiencing in providing CDL skills tests to CDL applicants in a timely and efficient manner.

(c) How the amendment conforms to the content of the authorizing statutes: The amendments provided the minimum qualifications, training requirements, and outlines prohibited conflicts of interest for third-party CDL skills test examiners.

(d) How the amendment will assist in the effective administration of the statutes: The amendments allow for the Department of State Police to address its manpower shortage in administering CDL skills test to CDL applicants in a timely and efficient manner while ensuring only qualified, trained individuals who must avoid conflicts of interest administer third-party skills tests on behalf of the department.

(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 DOE employees who administer third-party CDL skills tests to other DOE employees seeking a CDL to operate school buses, and further impact individuals seeking to enter a contractual agreement with the department to administer third-party skills tests. This regulation will have a peripheral impact on employees of commercial truck driving schools who also work under contract with the department, insofar as such third-party examiners will not be allowed to administer CDL skills tests to students of their current employer.

(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: See (3) above.

(5) Provide an estimate of how much it will cost to implement this administrative regulation: The funding for this regulation will come from the fee charged to CDL applicants, which is authorized by KRS 281A.160(5)(d) and amended in 2006 by HB707. The department estimates that it will pay contractual third-party CDL skills test examiners $150.00 per day and that it will contract with approximately 9 such examiners. Based upon assessed need, such examiners will likely be needed to provide contractual services on all authorized state working days within a calendar year.
FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate: 39 C.F.R. 383.75.


3. Minimum or uniform standards contained in the federal mandate: 39 C.F.R. 383.75 requires: (i) Third-party skill test examiners to administer CDL skills tests same manner as state CDL skills test examiner employees; (ii) Third-party CDL skills test examiners to have agreement with state allowing the FMCSA to conduct random examinations, audits, and inspections; (iii) Requires the state to conduct on-site inspections annually; requires third-party skills test examiners to meet the same qualifications and training requirements as state examiners; requires the state to perform sample testing of CDL applicants who are tests by third-party examiners; reserve to the state the authority to take remedial action against examiners who fail to administer CDL skills tests in compliance with state and federal law and regulations.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate: This regulation imposes the prohibition on contractual third-party skills test examiners from testing student CDL applicants of their current and former (i.e., last 12 months) employer.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements mandated by KRS 281A.160(5)(as amended in 2006 by HB707).

FINANCE AND ADMINISTRATION CABINET
School Facilities Construction Commission
(Amendment)
750 KAR 1:010. Commission procedures.


STATEMENT OF PUBLIC CONCERN: KRS 157.617(1) authorizes the School Facilities Construction Commission (SFCC) to promulgate administrative regulations for the orderly conduct of its affairs, including assisting local school districts to meet the school construction needs of the state. KRS 157.622(4) requires the SFCC to promulgate an administrative regulation governing allocations of state funds to eligible school districts. This administrative regulation establishes the procedures the SFCC utilizes in determining eligibility, determining the level of participation of each local school district, making the offer of assistance to the local school districts, determining allowable expenditures for those districts that maintain their eligibility, but do not have sufficient funds to complete their first priority project, and allocating savings from refinancings.

Section 1. Definitions. (1) "Available local revenue" is defined by KRS 157.615(1).
(2) "Daily interest" means the total interest divided by the number of days in the first coupon.
(3) "Eligible district" is defined by KRS 157.615(16).
(4) "Level repayment schedule" means a repayment schedule in which the combined annual amount of principal and interest payments for each issue of bonds remains relatively constant over the life of the issue.
(5) "Maximum annual repayment amount" means the maximum aggregate total of SFCC annual payments for all bonds issued for a particular school district in which the SFCC has participated. If a bond series has been refunded, the original issue and debt schedule shall be the one used in making this computation.
(6) "Offer of assistance" means the amount available for a school district from a current biennium along with any allocation available from a prior period which has not expired according to KRS 157.622(5) and (6).
(7) "SFCC" means the School Facilities Construction Commission.
(8) "Total interest" means the first gross interest payment of the debt service for the SFCC portion of the schedule.

Section 2. Eligibility. (1) The SFCC shall use the statement of need and available local revenue as certified by the Kentucky Board of Education in determining the rate of participation of each school district in any given biennium. Eligibility for participation as established in KRS 157.620(1) shall be certified by the Kentucky Board of Education.
(2) A school district retaining capital outlay funds in its current interest general fund under the provisions of KRS 157.420 in the year preceding the biennium in which funds are available or during the biennium shall be ineligible to participate in the SFCC Program during that funding period.

Section 3. Rate of Participation. (1) The rate of participation of each eligible district shall be determined by dividing the unmet needs of that district by the total unmet needs of all eligible districts and multiplying that fraction times the total new debt service budgeted for the biennium.
(2) If there are insufficient funds budgeted in the first year of the biennium to fund all the requests, bond sales shall be scheduled in the order in which the SFCC receives requests for approval of bond sales.
(3) All bond sales may proceed after January 1 of the first year of the biennium.

Section 4. Offer of Assistance. Upon certification of the rate of participation by the SFCC, the Executive Director of the SFCC shall notify each eligible district of its entitled rate of participation and the requirements to be met if it wishes to accept the offer of assistance. These requirements shall include:
(1) The amount of local revenue to be expended as certified by the Kentucky Board of Education;
(2) The priority order of facilities to be built as certified by the Kentucky Board of Education; and
(3) The sequence of events and deadlines to be met if the local
school district accepts the offer of assistance.

Section 5. Acceptance of Offer of Assistance. (1) Within thirty (30) days of receipt of the offer of assistance, the local board of education shall notify the SFCC of acceptance or rejection of the offer of assistance. The local district response shall indicate the amount of the offer it plans to commit to construction or renovation. (2) A district not responding within thirty (30) days shall be declared ineligible and the offer of assistance shall be withdrawn and redistributed to the eligible recipients. In extenuating circumstances and upon written request within the original thirty (30) day period, a single thirty (30) day extension shall be granted by the Executive Director of the SFCC.

Section 6. Review of Building Plans. The review and approval of building plans shall be the responsibility of the Kentucky Department of Education.

Section 7. Allowable Expenditures of Funds. (1) Funds available from available local revenue shall be expended before funds generated by bond sales authorized by the SFCC. (2) Funds available for a project shall be expended for the purpose of major renovation or construction of the identified project except that the balance of funds remaining after the completion of the project may be expended on the next project on the approved schedule of the respective districts. (3) Project costs may include site acquisition, providing architectural and engineering services, financial and legal services, and equipment. (a) The site acquisition cost shall be limited to the lesser of: 1. The actual cost of acquiring a site; or 2. The fair market value of the site as determined by a qualified appraisal obtained by the SFCC and charged to the project account. (b) Construction costs shall not include the cost of supplies. An item shall be considered a supply if the item: 1. Does not retain its original shape, appearance, and character with use; 2. Loses its identity through fabrication or incorporation into a different or more complex unit; 3. Is expendable. An item shall be expendable if it is more feasible to replace the item than repair it, if the item is damaged or has lost or worn parts; 4. Is expected to serve its principal purpose for less than ten (10) years, even with reasonable care and maintenance; 5. Is not an integral part of the building. An item shall be an integral part of the building if it: a. Is permanently fastened or attached to the building; b. Functions as part of the building, meaning that the item is essential for the building or site to be used for its intended purpose; or c. Will cause appreciable damage to the building if removed; 6. Does not enhance the value of a bondholder’s collateral or the project. (4) SFCC funds or funds from the restricted account shall not be used to: (a) Purchase a site not approved by the Kentucky Department of Education in accordance with 702 KAR 4.050; or (b) Reimburse the local board of education for a site acquired before enactment of KRS 157.611.

Section 8. Bond Issuance Procedures. (1) Upon acceptance of an offer of assistance by a local school district, the SFCC shall determine if the local school district or the SFCC shall issue the bonds. Local school districts may request authority from the SFCC to issue the bonds through the county, city, or other agency and Instrumentality of the Board of Education. (2) If the SFCC grants permission to issue bonds at the local level, the procedures for issuing the bonds shall be as follows: (a) The local board of education shall obtain the services of a financial advisor; (b) The contract with the financial advisor shall be submitted to the SFCC for final approval after signature by the local school district and the financial advisor; and (c) The local board of education shall obtain the services of a licensed trustee, paying agent, and registrar. (3) If the size of the bond issues is less than $1,000,000 or there is no local participation in the repayment, the SFCC may determine that it is in the best interests of the SFCC and the local school board for the SFCC to manage the bond sale procedures. If the SFCC determines that it is in the best interest of the SFCC and the local school board for the SFCC to manage the bond sale procedures: (a) The bonds shall be sold in the name of the SFCC; (b) The SFCC shall obtain the services of a financial advisor; (c) The SFCC may combine multiple projects into single bond issues; and (d) The SFCC shall obtain the services of a licensed trustee, paying agent, and registrar. (4) The following procedures shall be followed by all participating districts in construction of SFCC debt service schedules: (a) The SFCC’s portion of the bond sale shall be limited to a twenty (20) year issue, with a level repayment schedule. The maximum annual repayment amount shall not exceed the offer of assistance from the SFCC. 1. The debt service schedule shall have twenty (20) years of payments based on six (6) month intervals or forty (40) payments. If the payments begin so that only one (1) payment is made in the first year of the issue, payments may extend over twenty-one (21) fiscal years, if the amounts of the first and last payments combined do not exceed the amount of one (1) annual payment. 2. Annual payments shall be based on a fiscal year. The fiscal year of the SFCC shall begin on July 1 and end the following June 30. All schedules shall be prepared in a way that annual amounts based on a fiscal year are presented in a clear, easy-to-read format while each interest and principal payment is both segregated and totaled by payment period. (b) The local school district’s portion of the bond sale shall be structured to meet the unique financial needs of the district. Debt service on the bonds issued shall include the minimum amount required for eligibility to participate in the program as certified by the Kentucky Board of Education. The minimum term of the local bond issue to meet eligibility criteria shall be twenty (20) years. At the discretion of the local board of education, the bond issue may include a local contribution to debt service in excess of the minimum required, and the length of the local portion of the repayment schedule may exceed twenty (20) years. (c) Interest collected and accrued on funds derived from the bond sale shall be allocated to the debt service schedules of the school district and the SFCC in the same proportions as its respective participation in the bond issue. 1. For allocation purposes, each month shall be calculated as thirty (30) days. 2. The accrued interest allocated to the SFCC shall be calculated by multiplying the number of days times the daily interest. 3. The number of days shall be calculated from the issue date of the bonds to the day the bonds are delivered, excluding the day of settlement. 4. If local payments are involved in the bond issue, the accrued interest available to the local district shall be calculated as required by subparagraph 2 of this paragraph. (d) The proceeds of the bond sale shall be continually invested until expended on the project or until the project is completed. Any remaining proceeds or investment income received after completion of the project shall be applied to the debt service. Credit against the district’s and the SFCC’s debt service schedule shall be applied in the same percentage as the participation in the bond issue or, if permitted by the bond resolution or indenture, excess funds may be applied to an approved project next in order priority. (e) A certificate of project completion shall be filed with the SFCC by the local school district. The certificate shall summarize the application of the bond proceeds, investment earnings, and any remaining funds from either source. The certificate shall also verify the use of cash contribution as may be required for eligibility by the local school district. (f) Fees paid to a financial advisor shall be in accordance with
this paragraph. A fee that exceeds this schedule shall be paid by the local board of education.

1. The maximum fee for services and expenses of a fiscal agent shall be the highest amount according to the following schedule:
   a. $7,500, for any amount of bonds issued;
   b. $11 per $1,000, if the bond amount is under $1 million;
   c. $10 per $1,000, if the bond amount is between $1 million and $2 million;
   d. $4 per $1,000, if the bond amount is over $2 million.
2. The fee shall:
   a. Be based upon the amount of bonds actually issued,
   b. Include attorney fees, printing of bonds and official statements, advertising the bond issue, travel of the fiscal agent, and other normal expenses related to the bond closing; and
   c. Not include a title search or rating service.

Section 9. Cumulative Credit. Any eligible district which fails in any budget period to receive an allocation of state funds sufficient to fund the first priority project on the approved facilities plan of the district may request the approval of the SFCC to accumulate credit subject to the availability of funds, for the unused state portion for a period not to exceed eight (8) years. Districts which receive funds in excess of those required to complete the first project may apply those funds to the next priority project on their approved facilities plan. If there are insufficient funds to complete the next project, those funds may accumulate as previously outlined. All fund credit accumulated in this manner shall be forfeited at any time that the local district fails to accept an offer of assistance tendered to the district.

Section 10. Refinancing Savings. Savings that occur as the result of a refinancing in which the SFCC was a participant shall be divided as follows and in the following order or priority:

1. If the SFCC's amount of participation in the bond issue being refinanced is of such a level that the same amount of annual debt service can be maintained on behalf of the SFCC, it shall be maintained at the same annual amount; therefore, lowering the local district's account for annual debt service payments by the amount of the total savings on the refinancing. Consequently, the bonding capacity of the local district shall be increased allowing the district to pursue its next facility priority. Any accrued interest shall be deemed a part of the total savings.
2. If the SFCC's amount of participation in the bond issue being refinanced is of such a level that the same amount of annual debt service paid on behalf of the SFCC is greater than the annual debt service of the refinanced bond issue debt, annual savings generated shall be added to that school district's cumulative credit with the SFCC. These credits shall have no expiration time period for their use.

DR. ROBERT TARVIN, Executive Director
APPROVED BY AGENCY: June 7, 2006
FILED WITH LRC: June 12, 2006 at 10 a.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed amendment to the administrative regulation shall be held on July 24, 2006, at 10 a.m. in Suite 102, 229 West Main Street, 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 July 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: Robert Tarvin, Executive Director, School Facilities Construction Commission, 229 W. Main Street, Suite 102, Frankfort, Kentucky 40601, phone (502) 564-5582, fax (502) 564-3412.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Robert E. Tarvin

1. Provide a brief summary of:
   (a) What this administrative regulation does: This administrative regulation describes the procedures the School Facilities Construction Commission utilizes in determining eligibility; determining the level of participation of each local school district; making the offer of assistance to the local school districts; determining allowable expenditure of funds; cumulating credit for those districts that maintain their eligibility, but do not have sufficient funds to complete their first priority project; and allocating savings from refinancings.
   (b) The necessity of this administrative regulation: KRS 157.617 and 157.622 provide that the School Facilities Construction Commission shall provide administrative regulations for the manner in which it carries out its statutory authority.
   (c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation sets forth provisions for determining eligibility, determining the level of participation of each local school district, making the offer of assistance to the local school districts, determining allowable expenditure of funds, cumulating credit for those districts that maintain their eligibility, and allocating savings from refinancings.
   (d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation provides the basis on which the commission administers the funds provided by the legislature for the purpose of assisting local school districts to meet the school construction needs of the state in an equitable manner.
   (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 change will allow districts to accumulate the offers of assistance from SFCC for up to 8 years instead of 4.
      (b) The necessity of the amendment to this administrative regulation: This regulation change is necessary in order to comply with changes to KRS 157.622(4) made during the 2006 Legislative session.
      (c) How the amendment conforms to the content of the authorizing statutes: The statute currently authorizes SFCC to make offers of assistance to participating school districts. These offers of assistance are made in the form of annual debt service and can be accumulated by the district. This amendment to the regulation will comply with changes made to KRS 157.622(4) during the 2006 Legislative session, changing the cumulative time from 4 to 8 years.
      (d) How the amendment will assist in the effective administration of the statutes: This change would increase the cumulative time of the offers of assistance made to participating districts by SFCC, thus enabling the districts offers to have an 8 year life span.
      (3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are 176 local school districts within the state that are governed by this 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 change will assist the districts that participate in building facilities that are on their facility plan by enabling the districts to accumulate credit from past unused offers of assistance for up to 8 years, thereby allowing the districts more time to use SFCC dollars.
      (5) Provide an estimate of how much it will cost to implement this administrative regulation:
         (a) Initially: No additional cost.
         (b) On a continuing basis: No additional cost.
         (c) The cost of the funding to be used for the implementation and enforcement of this administrative regulation: No additional funding is necessary for implementation of this regulation.
      (7) Provide an assessment of whether an increase in fees or
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funding will be necessary to implement this administrative regulation, if new or by the change if it is an amendment: No additional funding is necessary for implementation of this regulation.

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

(9) TIERING: Is tiering applied? No. The same criteria apply to all school districts.

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department of Labor
Office of Workers' Claims
(Amendment)


STATUTORY AUTHORITY: KRS 342.033, 342.260(1), 342.270(3), 342.265(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 342.260(1) requires the executive director to promulgate administrative regulations necessary to implement the provisions of KRS Chapter 342. KRS 342.270(3) requires the executive director to promulgate an administrative regulation establishing procedures for the resolution of claims. KRS 342.033 requires the executive director to prescribe the format and content of written medical reports. KRS 342.265(1) requires the executive director to promulgate an administrative regulation governing appeals to the Workers' Compensation Board. This administrative regulation establishes the procedure for the resolution of claims before an administrative law judge or Workers' Compensation Board.

Section 1. Definitions. (1) "Administrative law judge" means an individual appointed pursuant to KRS 342.230(3).

(2) "Board" is defined by KRS 342.0011(10).

(3) "Civil rule" means the Kentucky Rules of Civil Procedure.

(4) "Date of filing" means the date that:

(a) A pleading, motion, or other document is received by the Executive Director at the Office of Workers' Claims in Frankfort, Kentucky, except:

1. Final orders and opinions of administrative law judges, which shall be deemed filed three (3) days after the date set forth on the final order or opinion; and

2. Documents delivered to the offices of the Office of Workers' Claims after the office is closed at 4:30 p.m. or on the weekend which shall be deemed filed the following business day; or

(b) A document is transmitted by United States registered (not certified) or express mail, or by other recognized mail carriers, and the date the transmitting agency receives the document from the sender as noted by the transmitting agency on the outside of the container used for transmitting, within the time allowed for filing.

(5) "Employer" means individuals, partnerships, voluntary associations and corporations.

(6) "Employer who has not secured payment of compensation" means any employer who employs an employee as defined by KRS 342.640 but has not complied with KRS 342.340.

(7) "Executive director" is defined by KHS 342.0011(19).

(8) "Latest available edition" means that edition of the "Guides to the Evaluation of Permanent Impairment" which the executive director has certified as being generally available to the office, attorneys, and medical practitioners, by posting prominently at the office's hearing sites the date upon which a particular edition of the "Guides to the Evaluation of Permanent Impairment" is applicable for purposes of KRS Chapter 342.

(9) "Special defenses" means defenses that shall be raised by "special answer" filed in accordance with Section 5(2)(d) of this administrative regulation.

Section 2. Parties. (1) The party making the original application for resolution of claim pursuant to KRS 342.270 or 342.316 shall be designated as "plaintiff." Adverse parties shall be designated as "defendants."

(2) All persons shall be joined as plaintiffs in whom any right to any relief pursuant to KRS Chapter 342, arising out of the same transaction or occurrence, is alleged to exist. If a person refuses to join as a plaintiff, that person shall be joined as a defendant, and the fact of refusal to join as a plaintiff shall be pleaded.

(3)(a) All persons shall be joined as defendants against whom the ultimate right to relief pursuant to KRS Chapter 342 may exist, whether jointly, severally, or in the alternative. An administrative law judge shall order, upon a proper showing, that a party be joined or dismissed.

(b) The Special Fund may be joined as a defendant in accordance with the appropriate statutory provisions for claims in which the injury date or date of last exposure occurred before December 12, 1996.

(c) Jornder shall be sought by motion as soon as practicable after legal grounds for joinder are known. Notice of joinder and a copy of the claim file shall be served in the manner ordered by the administrative law judge.

Section 3. Pleadings. (1) An application for resolution of claim and all other pleadings shall be typewritten and submitted in accordance with this administrative regulation.

(a) For an injury claim, an applicant shall submit a completed Form 101, Application for Resolution of Injury Claim.

(b) For an occupational disease claim other than coal workers' pneumoconiosis, an applicant shall submit a completed Form 102, Application for Resolution of Occupational Disease Claim.

(c) For a hearing loss claim, an applicant shall submit a completed Form 103, Application for Resolution of Hearing Loss Claim.

(2) An application for resolution of claim shall be filed with sufficient copies for service on all parties. The executive director shall make service by first class mail. Incomplete applications may be rejected and returned to the applicant. If the application is filed in proper form within twenty (20) days of the date it was returned, the filing shall relate back to the date the application was first received by the executive director. Otherwise, the date of second receipt shall be the filing date.

(3) All pleadings shall be served upon the executive director and shall be served upon all other parties by mailing a copy to the other parties or, if represented, to that representative, at the party's or representative's last known address. A certificate of service indicating the method and date of service and signed by the party shall appear on the face of the pleading. Notices of deposition and physical examination shall be served upon the parties and shall not be filed with the executive director.

(4) After the application for resolution has been assigned to an administrative law judge, the subsequent pleadings shall include, within the style of the claim and immediately before the claim number, "Before Administrative Law Judge (name)." Upon consolidation of claims, the most recent claim number shall be listed first.

(5)(a) All documents involved in an appeal to the Workers' Compensation Board shall include the language "Before Workers' Compensation Board" before the claim number within the style of the claim.

(b) Parties shall insert the language "Appeals Branch" or "Workers' Compensation Board" on the outside of the envelope containing documents involved in an appeal.

Section 4. Motions. (1) The party filing a motion shall tender a proposed order granting the relief requested.

(2) The party filing a motion may file a brief memorandum supporting the motion and opposing parties may file brief memoranda in reply. Further memoranda (for example, reply to response) shall not be filed.

(3) Every motion and response, the grounds of which depend upon the existence of facts not in evidence, shall be supported by affidavits demonstrating the facts.

(4) Every motion, the grounds of which depend upon the existence of facts which the moving party believes are shown in the evidence or are admitted by the pleadings, shall make reference to the place in the record where that evidence or admission is found.

(5) A motion, other than to reopen pursuant to KRS 342.125 or for interlocutory relief, shall be considered ten (10) days after the
date of filing. A response shall be considered if filed on or before the tenth day after the filing of the motion.

6(a) A motion to reopen shall be accompanied by as many of the following items as may be applicable:
1. A current medical release Form 106 executed by the plaintiff,
2. An affidavit evidencing the grounds to support reopening,
3. A current medical report showing a change in disability established by objective medical findings;
4. A copy of the opinion and award, settlement, voluntary agreed order or agreed resolution sought to be reopened,
5. An affidavit certifying that a previous motion to reopen has not been made by the moving party, or if one (1) has previously been made, the date on which the previous motion was filed;
6. A designation of evidence from the original record specifically identifying the relevant items of proof which are to be considered as part of the record during reopening; or
7. A certification of service that the motion was served on all parties as well as counsel for the parties.

(b1). A designation of evidence made by a party shall list only those items of evidence from the original record that are relevant to the matters raised on reopening.
2. The burden of completeness of the record shall rest with the parties to include so much of the original record, up to and including the award or order on reopening, as is necessary to permit the administrative law judge to compare the relevant evidence that existed in the original record with all subsequent evidence submitted by the parties.
3. Except for good cause shown at the time of the filing of the designation of evidence, a party shall not designate the entire original record from the claim for which reopening is being sought.

(c1). A motion to reopen shall not be considered until twenty-five (25) days after the date of filing.
2. Any response shall be filed within twenty (20) days of filing the motion to reopen.

A response may contain a designation of evidence specifically identifying evidence from the original record not already listed by the moving party that is relevant to matters raised in a response.

(d) Any party may use the following forms provided by the office for motions to reopen:
1. Form MTR-1, Motion to Reopen by Employee;
2. Form MTR-3, Motion to Reopen by Defendant; and
3. Form MTR-2, Motion to Reopen KRS 342.732 Benefits.

(7) A motion for allowance of a plaintiff’s attorney fee shall:
(a) Be made within thirty (30) days following the finality of the award, settlement or agreed resolution upon which the fee request is based;
(b) Be served upon the adverse parties and the attorney’s client;
(c) Set forth the fee requested and mathematical computations establishing that the request is within the limits set forth in KRS 342.320; and
(d) Be accompanied by:
1. An affidavit of counsel detailing the extent of the services rendered and the time expended;
2. A signed and dated Form 109 as required by KRS 342.320(5); and
3. A copy of the signed and dated contingency fee contract.

(8) A motion for allowance of defendant’s attorney’s fee shall be:
(a) Filed within thirty (30) days following the finality of the decision; and
(b) Accompanied by an affidavit of counsel detailing:
1. The extent of the services rendered and the time expended;
2. The hourly rate and total amount to be charged; and
3. The date upon which agreement was reached for providing the legal services.

(b) The following motions relating to vocational rehabilitation training provided by the office may be used by all parties:
(a) Form VRT, Petition for Vocational Rehabilitation Training; and
(b) Form WVR, Joint Motion and Agreement to Waive Vocational Rehabilitation Evaluation.

10. If a plaintiff is deceased, a Motion to Substitute Party and Continue Benefits shall be filed on Form 11.

Section 5. Application for Resolution of an Injury Claim and Response. (1) To apply for resolution of an injury claim, the applicant shall file Form 101 with the following completed documents:
(a) Work History (Form 104), to include all past jobs performed on a full or part-time basis within twenty (20) years preceding the date of injury;
(b) Medical History (Form 105), to include all physicians, chiropractors, osteopaths, psychiatrists, psychologists, and medical facilities such as hospitals where the individual has been seen or admitted in the preceding fifteen (15) years and including beyond that date any physician or hospitals rendering treatment for the same body part claimed to have been injured;
(c) Medical Release (Form 106);
(d) One (1) medical report, which may consist of legible, handwritten notes of the treating physician, and which shall include the following:
1. A description of the injury which is the basis of the claim;
2. A medical opinion establishing a causal relationship between the work-related events or the medical condition which is the subject of the claim; and
3. If a psychological condition is alleged, an additional medical report establishing the presence of a mental impairment or disorder;
(e) Documentation substantiating the plaintiff’s pre-injury and post-injury wages; and
(f) Documentation establishing additional periods for which temporary total disability benefits are sought.

(2)(a) The defendant shall file a Notice of Claim Denial or Acceptance on a Form 111 - Injury and Hearing Loss within forty-five (45) days after the notice of the scheduling order or within forty-five (45) days following an order sustaining a motion to reopen a claim.
(b) If a Form 111 is not filed, all allegations of the application shall be deemed admitted.
(c) The Form 111 shall set forth the following:
1. All pertinent matters which are admitted and those which are denied;
2. If a claim is denied in whole or in part, a detailed summary of the basis for denial;
3. The name of each witness whose testimony may be relevant to that denial; and
4. A description of the physical requirements of plaintiff’s job at the time of the alleged injury and the name, address and telephone number of the individual responsible for gathering this information for the employer and its insurer.

(d) In addition to the Form 111, a defendant shall file a special answer to raise any special defenses in accordance with this paragraph.
1. A defendant may incorporate special defenses that have been timely raised in the Form 111.
2. A "special answer" shall be filed within:
   a. Forty-five (45) days of the scheduling order; or
   b. Ten (10) days after discovery of facts supporting the defense if discovery could not have been had earlier in the exercise of due diligence.
3. A special defense shall be waived if not timely raised.
4. A special defense shall be pleaded if the defense arises under:
   a. KRS 342.035(3), unreasonable failure to follow medical advice;
   b. KRS 342.165, failure to comply with safety laws;
   c. KRS 342.316(7) or 342.335, false statement on employment application;
   d. KRS 342.295, voluntary rejection of KRS Chapter 342;
   e. KRS 342.610(3), voluntary intoxication or self-inflation of injury;
   f. KRS 342.710(5), refusal to accept rehabilitation services; or
   g. Running of periods of limitations or reprocessing under KRS 342.185, 342.270, 342.316, or other applicable statute.

Section 6. Application for Resolution of an Occupational Disease Claim and Response. (1) To apply for resolution of an oc-
pational disease claim, the applicant shall file Form 102 with the following completed attachments:

(a) Work history (Form 104), to include all past jobs performed on a full or part-time basis within twenty (20) years preceding the date of last exposure and all jobs in which plaintiff alleges exposure to the hazards of the occupational disease;
(b) Medical history (Form 105), to include all physicians, chiropractors, osteopaths, psychiatrists, psychologists, and medical facilities such as hospitals where the individual has been seen or admitted in the preceding fifteen (15) years and including beyond that date any physicians or hospitals regarding treatment for the same body part claimed to have been injured;
(c) Medical release (Form 106);
(d) One (1) medical report supporting the existence of occupational disease; and
(e) Social Security earnings record release form (Form 115).

(2)(a) The defendant shall file a Notice of Claim Denial or Acceptance on a Form 111-OD:
1. Within forty-five (45) days after the notice of the scheduling order; and
2. In accordance with Section 5(2)(b), (c), and (d) of this administrative regulation.
(b) In addition to the Form 111-OD, a defendant shall file a special answer to raise any special defenses in accordance with Section 5(2)(d) of this administrative regulation.
(c) For all occupational disease and hearing loss claims, the executive director shall promptly schedule an examination pursuant to KRS 342.315 and 342.316.

Section 7. Application for Resolution of a Hearing Loss Claim and Response. (1) To apply for resolution of a hearing loss claim, the applicant shall file Form 103 with the following completed documents:

(a) Work history (Form 104), to include all past jobs performed on a full or part-time basis within twenty (20) years preceding the last date of noise exposure;
(b) Medical history (Form 105), to include all physicians, chiropractors, osteopaths, psychiatrists, psychologists, and medical facilities such as hospitals where the individual has been seen or admitted in the preceding fifteen (15) years and including beyond that date any physicians or hospitals regarding treatment for hearing loss or ear complaints;
(c) Medical release (Form 106);
(d) One (1) medical report describing the hearing loss which is the basis of the claim and, if a psychological condition is alleged, an additional medical report establishing the presence of a mental impairment or disorder. Medical reports required under this paragraph may consist of legible, hand-written notes of a treating physician and
(a) Social Security earnings record release form (Form 115).

(2)(a) The defendant shall file a Notice of Claim Denial or Acceptance on a Form 111 - Injury and Hearing Loss:
1. Within forty-five (45) days after the notice of the scheduling order; and
2. In accordance with Section 5(2)(b), (c), and (d) of this administrative regulation.

(b) In addition to the Form 111 - Injury and Hearing Loss, a defendant shall file a special answer to raise any special defenses in accordance with Section 5(2)(d) of this administrative regulation.

Section 8. Discovery, Evidence, and Exchange of Records. (1) Proof taking and discovery for all parties shall begin from the date of issuance by the commissioner of the scheduling order.

(2)(a) Plaintiff and defendants shall take proof for a period of sixty (60) days from the date of the scheduling order;
(b) After the sixty (60) day period, defendants shall take proof for an additional thirty (30) days; and
(c) After the defendant's thirty (30) day period, the plaintiff shall take rebuttal proof for an additional fifteen (15) days.

(3) During the period of a claim, any party obtaining or possessing a medical or vocational report or records shall serve a copy of the report or records upon all other parties within ten (10) days following receipt of those reports or records or within ten (10) days of receipt of notice if assigned to an administrative law judge.

(4) All medical reports filed with Forms 101, 102, or 103 shall be admitted into evidence without further order if:
(a) An objection is not filed prior to or with the filing of the Form 111; and
(b) The medical reports comply with Section 10 of this administrative regulation.

Section 9. Vocational Reports. (1) A vocational report may be filed by notice and shall be admitted into evidence without further order and without the necessity of a deposition, if an objection is not filed.
(2) Vocational reports shall be signed by the individual making the report.
(3) Vocational reports shall include, within the body of the report or as an attachment, a statement of the qualifications of the person making the report.
(4) An objection to the filing of a vocational report shall:
(a) Be filed within ten (10) days of the filing of the notice or motion for admission; and
(b) State the grounds for the objection with particularity.
(5) The administrative law judge shall rule on the objection within fifteen (15) days.
(6) If a vocational report is admitted as direct testimony, an adverse party may depose the reporting vocational witness in a timely manner as if on cross-examination at its own expense.

Section 10. Medical Reports. (1) A party shall not introduce direct testimony from more than two (2) physicians by medical report except upon a showing of good cause and prior approval by an administrative law judge.

(2) Medical reports shall be submitted on Form 107-1 (injury), Form 107-P (psychological), Form 108-OD (occupational disease), Form 108-CWP (coal workers' pneumoconiosis), or Form 108-HL (hearing loss), as appropriate, except that an administrative law judge may permit the introduction of other reports.
(3) Medical reports shall be signed by the physician making the report, or be accompanied by an affidavit from the physician or submitting party or representative verifying the authenticity of the report.
(4) Medical reports shall include, within the body of the report or as an attachment, a statement of qualifications of the person making the report. If the qualifications of the physician who prepared the written medical report have not been filed with the executive director and the physician has been assigned a medical qualifications index number, reference may be made to the physicians index number in lieu of attaching qualifications.
(5) Narrative in medical reports shall be typewritten. Other portions, including spirometric tracings, shall be clearly legible.
(6)(a) Upon notice, a party may file the testimony of two (2) physicians, either by deposition or medical report, which shall be admitted into evidence without further order if an objection is not filed.
(b) Objection to the filing of a medical report shall be filed within ten (10) days of the filing of the notice or the motion for admission.
(c) Grounds for the objection shall be stated with particularity.
(d) The administrative law judge shall rule on the objection within fifteen (15) days of filing.
(7) If a medical report is admitted as direct testimony, an adverse party may depose the reporting physician in a timely manner as if on cross-examination at its own expense.

Section 11. Medical Evaluations Pursuant to KRS 342.315. (1) All persons claiming benefits for hearing loss or occupational disease other than coal workers' pneumoconiosis shall be referred by the commissioner for a medical evaluation in accordance with contracts entered into between the executive director and the University of Kentucky and University of Louisville medical schools.
(2) Upon all other claims except coal workers' pneumoconiosis claims, the commissioner or an administrative law judge may direct appointment by the executive director of a university medical evaluator.
(3) Upon referral for medical evaluation under this section, a party may tender additional relevant medical information to the
university medical school to whom the evaluation is assigned. This additional information shall not be filed of record. The additional medical information shall be:

(a) Submitted to the university within fourteen (14) days following an order for medical evaluation pursuant to KRS 342.315;
(b) Submitted by way of medical reports, notes, or depositions;
(c) Clearly legible;
(d) Indexed;
(e) Furnished in chronological order;
(f) Timely furnished to all other parties within ten (10) days following receipt of the medical information; and
(g) Accompanied by a summary that is filed of record and served upon all parties. The summary shall:

1. Identify the medical provider;
2. Include the date of medical services; and
3. Include the nature of medical services provided.

(4) Upon the scheduling of an evaluation, the executive director shall provide notice to all parties and the employer shall forward to the plaintiff necessary travel expenses as required by KRS 342.315(4). Upon completion of the evaluation, the executive director shall provide copies of the report to all parties and shall file the original report in the claim record to be considered as evidence.

(5) The administrative law judge shall allow timely cross-examination of a medical evaluator appointed by the executive director at the expense of the moving party.

(6) Unjustified failure by the plaintiff to attend the scheduled medical examination may be grounds for dismissal, payment of a non-show fee, sanctions, or all of the above.

(7) Failure by the employer or its insurance carrier to pay travel expenses within seven (7) days of notification of a scheduled medical examination may be grounds for imposition of sanctions.

Section 12. Interlocutory Relief. (1) During a claim, a party may seek interlocutory relief through:

(a) Interim payment of income benefits for total disability pursuant to KRS 342.730(1)(a);
(b) Medical benefits pursuant to KRS 342.020; or
(c) Rehabilitation services pursuant to KRS 342.710.

(2) Upon motion of any party, an informal conference:

(a) Shall be held to review the plaintiff’s entitlement to interlocutory relief; and
(b) May be held telephonically.

(3) Any response to a request for interlocutory relief shall be served within twenty (20) days from the date of the request and thereafter, the request shall be ripe for a decision.

(4) (a) Entitlement to interlocutory relief shall be shown by means of affidavit, deposition, or other evidence of record demonstrating the following:

1. Is eligible under KRS Chapter 342;
2. Will suffer irreparable injury, loss or damage pending a final decision on the application.

(b) Rehabilitation services may be ordered while the claim is pending upon showing that immediate provision of services will substantially increase the probability that the plaintiff will return to work.

(5) If interlocutory relief is awarded in the form of income benefits, the application shall be placed in abeyance unless a party shows irreparable harm will result. The administrative law judge may require periodic reports as to the physical condition of the plaintiff. Upon motion and a showing of cause, or upon the administrative law judge’s own motion, interlocutory relief shall be terminated and the claim removed from abeyance.

(6) An attorney’s fee in the amounts authorized by KRS 342.320 that does not exceed twenty (20) percent of the weekly income benefits awarded pursuant to a request for interlocutory relief may be granted. The approved fee shall be deducted in equal amounts from the weekly income benefits awarded and shall be paid directly to the attorney.

(7) A party seeking interlocutory relief may use the following forms:

(a) Motion for Interlocutory Relief, Form MIR-1;
(b) Affidavit for Payment of Medical Expenses, Form MIR-2;
(c) Affidavit for Payment of Temporary Total Disability, Form MIR-3; and
(d) Affidavit Regarding Rehabilitation Services, Form MIR-4.

Section 13. Benefit Review Conferences. (1) The purpose of the benefit review conference shall be to expedite the processing of the claim and to avoid if possible the need for a hearing.

(2) The benefit review conference shall be an informal proceeding.

(3) The date, time, and place for the benefit review conference shall be stated on the scheduling order issued by the executive director.

(4) The plaintiff and his or her representative, the defendant or its representative, and the representatives of all other parties shall attend the benefit review conference.

(5) If the defendant is insured or a qualified self-insured, a representative of the carrier with settlement authority shall be present or available by telephone during the benefit review conference.

(6) The administrative law judge may upon motion waive the plaintiff’s attendance at the benefit review conference for good cause shown.

(7) A transcript of the benefit review conference shall not be made.

(8) Representatives of all parties shall have authority to resolve disputed issues and settle the claim at the benefit review conference.

(9) The defendant shall provide a completed Form AWV-1, Average Weekly Wage Form.

(10) The plaintiff shall bring copies of unpaid medical bills and documentation of out-of-pocket expenses including travel for medical treatments.

(11) Each defendant shall bring copies of disputed medical bills and medical expenses.

(12) Ten (10) days before the benefit review conference, the parties shall exchange final stipulations and lists of known witnesses and exhibits that:

(a) Name each proposed witness;
(b) Summarize the anticipated testimony of each witness;
(c) For medical witnesses, include in the summary:
  1. The diagnosis reached;
  2. Clinical findings and results of diagnostic studies upon which the diagnosis is based;
  3. The functional impairment rating assessed by the witness; and
  4. A description of any work-related restrictions imposed; and
(d) Identify any exhibits.

(13) At the benefit review conference, the parties shall:

(a) Attempt to resolve controversies and disputed issues; 
(b) Narrow and define disputed issues; and
(c) Facilitate a prompt settlement.

(14) A party seeking postponement of a benefit review conference shall file a motion at least fifteen (15) days prior to the date of the conference and shall demonstrate good cause for the postponement.

(15) If at the conclusion of the benefit review conference the parties have not reached agreement on all issues, the administrative law judge shall:

(a) Prepare a summary stipulation of all contested and uncontested issues which shall be signed by representatives of the parties and by the administrative law judge; and
(b) Schedule a final hearing.

(16) Only contested issues shall be the subject of further proceedings.

(17) Upon motion with good cause shown, the administrative law judge may order that additional discovery or proof be taken between the benefit review conference and the date of the hearing and may limit the number of witnesses to be presented at the hearing.

Section 14. Evidence - Rules Applicable. (1) The Rules of Evidence prescribed by the Kentucky Supreme Court shall apply in all proceedings before an administrative law judge except as varied by specific statute and this administrative regulation.

(2) Any party may file as evidence before the administrative
law judge pertinent material and relevant portions of hospital, educational, Office of Vital Statistics, Armed Forces, Social Security, and other public records. An opinion of a physician which is expressed in these records shall not be considered by an administrative law judge in violation of the limitation on the number of physician's opinions established in KRS 342.033.

Section 15. Extensions of Proof Time. (1) An extension of time for producing evidence may be granted upon showing of circumstances that prevent timely introduction. 

(2) A motion for extension of time shall be filed no later than five (5) days before the deadline sought to be extended. 

(3) The motion or supporting affidavits shall set forth: 

(a) The efforts to produce the evidence in a timely manner; 

(b) Facts which prevented timely production; and 

(c) The date of availability of the evidence, the probability of its production, and the materiality of the evidence.

(4) In the absence of compelling circumstances, only one (1) extension of thirty (30) days shall be granted to each side for completion of discovery or proof by deposition.

(5) The granting of an extension of time for completion of discovery or proof shall:

(a) Enlarge the time to all:

1. Plaintiffs if the extension is granted to a plaintiff, and

2. Defendants if an extension is granted to a defendant, and

(b) Extend the time of the adverse party automatically except if the extension is for rebuttal proof.

Section 16. Stipulation of Facts. (1) Refusal to stipulate facts which are not genuinely in issue shall warrant imposition of sanctions as established in Section 24 of this administrative regulation. 

An assertion that a party has not had sufficient opportunity to ascertain relevant facts shall not be considered "good cause" in the absence of due diligence.

(2) Upon a party's request, a party may be relieved of a stipulation if the motion for relief is filed at least ten (10) days prior to the date of the hearing, or as soon as practicable after discovery that the stipulation was erroneous.

(3) Upon granting relief from a stipulation, the administrative law judge may grant a continuance of the hearing and additional proof time.

Section 17. Discovery and Depositions. (1) Discovery and the taking of depositions shall be in accordance with the provisions of Civil Rules 26 to 37, inclusive, except for Civil Rules 27, 33, and 36 which shall not apply to practice before the administrative law judges or the board.

(2) Depositions may be taken by telephone if the reporter administers the oath to the witness and reporting the deposition is physically present with the witness at the time the deposition is given. Notice of a telephonic deposition shall relate the following information:

(a) That the deposition is to be taken by telephone;

(b) The address and telephone number from which the call will be placed to the witness;

(c) The address and telephone number of the place where the witness will answer the deposition call; and

(d) Opposing parties may participate in the deposition either at the place where the deposition is being given, at the place the telephone call is placed to the witness, or by conference call. If a party elects to participate by conference call, that party shall contribute proportionate costs of the conference call.

(3) The executive director shall establish a medical qualifications index. 

(a) An index number shall be assigned to a physician upon the filing of the physician's qualifications.

(b) Any physician who has been assigned an index number may offer the assigned number in lieu of stating qualifications.

(c) Qualifications shall be revised or updated by submitting revisions to the executive director.

(d) A party may inquire further into the qualifications of a physician.

Section 18. Hearings. (1) At the hearing, the parties shall present proof concerning contested issues. If the plaintiff or plaintiff's counsel fails to appear, the administrative law judge may dismiss the case for want of prosecution, or if good cause is shown, the hearing may be continued.

(2) At the conclusion of the hearing, the claim shall be taken under submission immediately or briefs may be ordered.

(3) Briefs shall not exceed fifteen (15) pages in length. Reply briefs shall be limited to five (5) pages. Permission to increase the length of a brief shall be sought by motion.

(4) The administrative law judge may announce his decision at the conclusion of the hearing or shall defer decision until rendering a written opinion.

(5) A decision shall be rendered no later than sixty (60) days following the hearing.

(6) The time of filing a petition for reconsideration or notice of appeal shall not begin to run until after the "date of filing" of the written opinion.

(7) An opinion or other final order of an administrative law judge shall not be deemed final until the administrative law judge has certified that a certification of mailing was sent to:

(a) An attorney who has entered an appearance for a party; or

(b) The party if an attorney has not entered an appearance.

(8) The parties with approval of the administrative law judge may waive a final hearing. Waiver of a final hearing shall require agreement of all parties and the administrative law judge. The claim shall be taken under submission as of the date of the order allowing the waiver of hearing. A decision shall be rendered no later than sixty (60) days following the date of the order allowing the waiver of hearing.

Section 19. Petitions for Reconsideration. (1) If applicable, a party shall file a petition for reconsideration within fourteen (14) days of the filing of a final order or award of an administrative law judge, stating the reason or reasons for which the petitioner seeks to have corrected and setting forth the authority upon which petitioner relies. The party filing the petition for reconsideration shall tender a proposed order granting the relief requested.

(2) A response shall be served within ten (10) days after the date of filing of the petition.

(3) The administrative law judge shall act upon the petition within ten (10) days after the response is due.

Section 20. Benefit Calculations for Settlements. (1) For computing lump sum settlements, the employer shall utilize the prescribed discount rate for its weeks of liability only, not for the entire award period. A discount shall not be taken on past due benefits by the employer or Special Fund. Lump sum settlements shall be calculated using the Lump Sum Settlement Tables and the Six (6) Percent Present Value Table as follows:

(e) Determine the entire lump sum liability:

1. Compute the remaining weeks of liability in the award by subtracting the number of weeks past due from the entire number of weeks in the award;

2. Discount the number of weeks remaining in the award at the prescribed discount rate;

3. Multiply the weekly benefit rate by the discounted number of weeks remaining (subparagraph 2 of this paragraph) in the award. This product shall equal the entire future lump sum liability for the award; and

4. Add the amount of past due benefits to the future lump sum liability award (subparagraph 3 of this paragraph). The sum shall represent the entire lump sum value of the award.

(b) Determine the employer's lump sum liability as follows:

1. The employer's future liability shall be computed by determining its total weeks of liability less the number of weeks of liability past due.

2. The number of weeks remaining shall be discounted at the prescribed discount rate and multiplied by the amount of the weekly benefit.

3. Multiply the number of past due weeks by the amount of the weekly benefit.

4. The employer's entire liability for a lump sum payment shall be determined by adding the results of paragraph (b)2 and 3 of this subsection.
(c) Determine the Special Fund's portion of the lump sum liability by subtracting the value of the employer's liability in lump sum (paragraph (b) of this subsection) from the entire value of the lump sum settlement (paragraph (a) of this subsection). The remainder shall be the Special Fund's lump sum liability.

(2) If the employer settles its liability for income benefits with the employee for a lump sum payment and a determination is made of the Special Fund's liability, the Special Fund's portion of income benefits shall be paid commencing with the date of approval of the employer's settlement and continuing for the balance of the compensable period.

(3) In computing settlements involving periodic payments, the employer shall pay its liability over the initial portion of the award, based on the number of weeks its liability bears to the entire liability for the claim. The Special Fund shall make all remaining payments for the balance of the compensable period.

(4) Pursuant to KRS 342.265, election by the Special Fund to settle on the same terms as the employer shall mean the Special Fund agrees to settle in the same manner as the employer in either a discounted lump sum or in periodic payments based upon its proportionate share of the permanent disability percentage paid by the employer. "Same terms" shall not include any additional payments the employer included for buy out of medical expenses, temporary total disability, rehabilitation, or other benefits for which the Special Fund is not liable.

(5) Parties Involved in a lump-sum settlement of future periodic payments shall use the discount factor computed in accordance with KRS 342.265(5).

(6) Parties who reach an agreement pursuant to KRS 342.265 shall file the agreement on the applicable form as listed below:
   (a) Form 110-F, Agreement - Fatality;
   (b) Form 110-I, Agreement - Injury;
   (c) Form 110-O, Agreement - Occupational Disease; or
   (d) Form 110-CWP, Agreement - Coal Workers' Pneumoconiosis.


(a) Pursuant to KRS 342.285(1), decisions of administrative law judges shall be subject to review by the Workers' Compensation Board in accordance with the procedures set out in this administrative regulation.

(b) Parties shall have the right to appeal the decisions of administrative law judges to the Workers' Compensation Board. The Workers' Compensation Board may review decisions of administrative law judges on its own motion or on petition of the parties.

(2) Time and Form of notice of appeal.

(a) Within thirty (30) days of the date a final award, order, or decision rendered by an administrative law judge pursuant to KRS 342.279(2) is filed, any party aggrieved by that award, order, or decision may file a notice of appeal to the Workers' Compensation Board.

(b) As used in this section, a final award, order or decision shall be determined in accordance with Civil Rule 54.02(1) and (2).

(c) The notice of appeal shall:
   1. Denote the appealing party as the petitioner;
   2. Denote all parties against whom the appeal is taken as respondents;
   3. Name the administrative law judge who rendered the award, order, or decision appealed from as a respondent;
   4. If appropriate pursuant to KRS 342.120 or 342.1242, name the director of the Division of Workers' Compensation Funds as a respondent; and
   5. Include the claim number.

(d) Cross-appeal.

1. Any party may file a cross-appeal through notice of cross-appeal filed within ten (10) days after the notice of appeal is served.

2. A cross-appeal shall designate the parties as stated in the notice of appeal.

(e) Failure to file the notice within the time allowed shall require dismissal of the appeal.

(f) The executive director shall issue an acknowledgement to all parties of the filing of a notice of appeal or cross-appeal.

(3) Number of copies and format of petitioner's brief.

(a) The petitioner's brief shall be filed within thirty (30) days of the filing of the notice of appeal.

(b) An original and two (2) copies of the petitioner's brief shall be filed with the Executive Director of the Office of Workers' Claims.

(c) The petitioner's brief shall conform in all respects to Civil Rule 7.02(4).

(4) Petitioner's brief. The petitioner's brief shall designate the parties as petitioner (or petitioners) and respondent (or respondents) and shall be drafted in the following manner:

(a) The name of each petitioner and each respondent shall be included in the brief.

(b) The petitioner shall specifically designate as respondents all adverse parties.

(c) The administrative law judge who rendered the award, order, or decision appealed from shall be named as a respondent.

(d) The workers' compensation claim number, or numbers, shall be set forth in all pleadings before the Workers' Compensation Board.

(e) The claim number shall state the date of entry of the final award, order, or decision by the administrative law judge.

(f) The petitioner's brief shall include a "Statement of Benefits Pending Review" which shall set forth whether the benefits designated to be paid by the award, order, or decision for which review is being sought have been instituted pursuant to KRS 342.300.

(g) The organization and contents of the petitioner's brief for review shall be as follows:

1. A brief "Introduction" shall Indicate the nature of the case.

2. A "Statement of Points and Authorities" shall set forth, succinctly and in the order in which they are discussed in the body of the argument, the petitioner's contentions with respect to each issue of law on which he relies for a reversal, listing under each of the following points on which the argument appears and on which the authorities are cited. This requirement may be eliminated for briefs of five (5) or less pages.

3. A "Statement of the Case" shall consist of a chronological summary of the facts and procedural events necessary to an understanding of the issues presented by the appeal, with ample reference to the specific pages of the record supporting each of the statements narrated in the summary.

4. An "Argument" shall contain:

   a. Conform with the statement of points and authorities, with ample supportive references to the record and citations of authority pertinent to each issue of law; and

   b. Contain, at the beginning of the argument, a statement with reference to the record showing whether the issue was properly preserved for review and, if so, in what manner.

5. A "Conclusion" shall set forth the specific relief sought from the board.

6. An "Appendix" shall contain:

   a. Copies of the final award, order, or decision of the administrative law judge from which review is being sought;

   b. Any petitions for reconsideration filed by the parties pursuant to KRS 342.281;

   c. The administrative law judge's order addressing any petitions for reconsideration;

   d. Copies of cases cited from federal courts and foreign jurisdictions, if any, upon which reliance is made; and

   e. Copies of prior board opinions or nonfinal or unpublished opinions of the Court of Appeals or Supreme Court in accordance with subsection (9) of this section.

7. Civil Rule 76.28(4)(c) shall govern the use of unpublished opinions of the Court of Appeals or Supreme Court.

8. Respondent's brief, combined brief, or cross-petitioner's brief.

9. Each respondent shall file an original and two (2) copies of
a brief, combined brief if cross-petition or cross-petitioner's brief, within thirty (30) days of the date on which the petitioner's brief was filed with the Executive Director of the Office of Workers' Claims.

(b) The respondent's brief shall include a "Need for Oral Argument" similar to the statement required of the petitioner by subsection (4)(e) of this section.

(c) The respondent's brief shall include a "Statement of Benefits Pending Review" similar to the statement required of the petitioner by subsection (4)(f) of this section.

(d) Respondent's counter-argument shall follow the organization and content of the petitioner's brief as set forth in subsection (4)(g) of this section.

(3) Reply brief.

(a) If applicable, the petitioner may file a reply brief within ten (10) days after the date on which the respondent's brief was served or due, whichever is earlier.

(b) The organization and contents of the reply brief shall be as provided in Civil Rule 76.12(4)(e), except that an index, or contents page shall not be required.

(c) If a cross-appeal has been filed, the cross-petitioner's reply brief may be served within ten (10) days after the date on which the last cross-respondent's brief was served or due, whichever is earlier.

(7) Certification. The petitioner's brief, respondent's brief, and reply brief shall be signed by each party or his counsel and that signature shall constitute a certification that the statements contained in the document are true and made in good faith.

(8) Service of notice of appeal, cross-appeal, petitioner's brief, respondent's brief, and reply briefs on adverse parties.

(a) Before filing a notice of appeal, cross-appeal, or any brief with the Executive Director of the Office of Workers' Claims, a party shall serve, in the manner provided by Civil Rule 5.02, a copy of the document on each adverse party.

(b) Every brief filed in an appeal to the Workers' Compensation Board shall bear, on the front cover, a signed statement, in accordance with Civil Rule 5.03 by the attorney or party that service has been made as required by paragraph (a) of this subsection. The statement shall identify by name each person served.

(c) The name of each attorney submitting a document to the Workers' Compensation Board with a current address and telephone number shall appear following its "conclusion".

(d) If the respondent is also a cross-petitioner, the respondent may file a combined brief or separate cross-petitioner's brief which shall address issues raised by the cross-appeal.

(e) If a separate cross-petitioner's brief is filed, the format shall be the same as a respondent's brief.

(9) Form of citations.

(a) All citations of Kentucky statutes and reported decisions of the Court of Appeals and Supreme Court shall conform to the requirements of Civil Rule 76.12(4)(c).

(b) All citations of Kentucky unpublished decisions shall conform to the requirements of Civil Rule 76.28(4)(c).

(c) Service of an unpublished decision shall be accomplished by including a copy of the decision in the appendix for a brief filed in an appeal to the board.

(d) Citations for prior decisions of the board [unpublished decisions of the Court of Appeals or Supreme Court shall include the style of the case, the appropriate claim or case number, and the date the decision was rendered.

(10) Number of pages.

(a) The petitioner's brief and the respondent's brief shall be limited to twenty (20) pages each.

(b) Reply briefs shall be limited to five (5) pages.

(c) Combined briefs shall be limited to twenty-five (25) pages.

(d) The parties shall make every effort to comply with the above page limitations.

(e) Permission to increase the length of a brief shall be sought by motion, but shall only be granted upon a showing of good cause.

(11) Sanctions. Failure of a party to file a brief conforming to the requirements of this administrative regulation or failure of a party to timely file a response may be grounds for the imposition of one (1) or more of the following sanctions:

(a) Affirmation or reversal of the final order;

(b) Rejection of a brief that does not conform as to organization or content, with leave to refile in proper form within ten (10) days of the date returned. If timely refiled occurs, the filing shall date back to the date of the original filing;

(c) Striking of an untimely response;

(d) A fine of not more than $500; or

(e) Dismissal.

(12) Motions.

(a) Except for a brief, a motion or pleading shall require the original to be filed with the Executive Director of the Office of Workers' Claims.

(b) The style of the case, including the claim number and title of the motion or pleading, shall appear on the first page of the motion or pleading.

(c) The party filing a motion may file a brief memorandum supporting the motion and opposing parties may file brief memoranda in response. To be considered, a response shall be filed within ten (10) days of the motion. Further responses shall not be filed.

(d) Every motion and response, the grounds of which depend upon the existence of facts not in evidence, shall be supported by affidavits demonstrating those facts.

(e) Every motion and response, the grounds of which depend upon the existence of facts which the moving or responding party believes are shown in the evidence or are admitted by the pleadings, shall make reference to the place in the record where that evidence or admission is found.

(f) Before filing a motion or pleading with the Executive Director of the Office of Workers' Claims, a party shall serve, in the manner provided by Civil Rule 5.02, a copy of the document on each adverse party.

(g) The filing of a motion to dismiss an appeal shall stay the remaining time for the filing of a responsive pleading. If the petitioner's brief has been previously filed and a motion to dismiss has been overruled, the respondent shall have fifteen (15) days from the order to file a respondent's brief.

(h) Except for motions that call for final disposition of an appeal, any board member designated by the chairman may dispose of a motion. An intermediate order may be issued on the signature of any board member.

(13) Oral arguments.

(a) Upon motion of a party or upon the board's own motion, the board may order an oral argument on the merits in a case appealed from a decision, award or order of an administrative law judge.

(b) Oral arguments shall occur on a date and at a time and location specified by the board.

(c) Appeals designated for oral argument shall be held in abeyance and all subsequent appeal time in the case shall be calculated from the date of the oral argument.

(14) Continuation of benefits pending appeal

(a) Benefits awarded by an administrative law judge which are not contested shall be paid during the pendency of an appeal. A motion requesting the payment of these benefits shall not be required. Uncontested benefits shall include income benefits at an amount lesser than what was awarded if the issue on appeal addresses the amount of benefits to be awarded as opposed to the entitlement to income benefits.

(b) Upon the motion of a party pursuant to KRS 342.300, the board may order payment of benefits pending appeal in conformity with the award, decision, or order appealed from.

(c) Entitlement to relief pursuant to KRS 342.300 shall be granted upon motion establishing that:

1. The probability of the existence in fact of:
   a. Financial loss;
   b. Privation, suffering, or adversity resulting from insufficient income; or
   c. Deniment to the moving party's property or health if payment of benefits is not instituted; and
2. There exists a reasonable likelihood that the moving party will prevail on appeal.

(d) Any response to a motion for continuation of an award pending appeal shall be served within ten (10) days from the date of the request and, thereafter, the request shall be ripe for a decision.

(e) Entitlement to relief by the moving party and responses shall be shown by:

1. Affidavit if the grounds for the motion or response depend upon the existence of facts not in evidence; or
2. Supporting memorandum citing to evidence existing within the record and making reference to the place in the record where that evidence is found.

(15) Decision

(a) The board shall:

1. Enter its decision affirming, modifying, or setting aside the order appealed from;
2. Remand the claim to an administrative law judge for further proceedings.

(b) Motions for reconsideration shall not be permitted.

(c) The decision of the administrative law judge shall be affirmed:

1. A board member is unable to sit on a decision; and
2. The remaining two (2) board members cannot reach an agreement on a final disposition.

(16) Appeal from board decisions. If applicable, pursuant to KRS 342.290, the decision of the board shall be appealed to the Kentucky Court of Appeals as provided in Civil Rule 73.28

Section 22. Coverage - Insured Status. Upon the filing of an application for resolution of claim, the executive director shall ascertain whether the employer or any other person against whom a claim is filed and who is not exempted by KRS 342.650 has secured payment of compensation by obtaining insurance coverage or qualifying as a self-insurer pursuant to KRS 342.340. If an employer does not have insurance coverage or qualify as a self-insurer, the executive director shall notify the administrative law judge and all parties by service of a certification of no coverage.

Section 23. Withdrawal of Records. (1) A portion of any original record of the office shall not be withdrawn except upon an order of the executive director, an administrative law judge, or a member of the board.

(2)(a) All physical exhibits, including x-rays, shall be disposed of sixty (60) days after the order resolving the claim has become final except x-rays filed in coal workers' pneumoconiosis claims which shall be returned to the party who filed the x-ray.

(b) A party filing an exhibit may make arrangements to claim an exhibit prior to that time.

(c) If an unclaimed exhibit has no money value, it shall be destroyed.

2. If an unclaimed exhibit has a value of more than $100, it shall be sold as surplus property.

3. If an unclaimed exhibit has a value of less than $100, it shall be donated to the appropriate state agency.

4. If an unclaimed exhibit has historic value, it shall be sent to the state archives.

Section 24. Sanctions. (1) Pursuant to KRS 342.310, an administrative law judge or the board may assess costs upon determination that proceedings have been brought, prosecuted, or defended without reasonable grounds.

(2) A sanction may be assessed against an offending attorney or representative rather than against the party.

(3) If a party is a governmental agency and attorney's fees are assessed, the fees shall include fees for the services of an attorney in public employment, measured by the reasonable cost of similar services had a private attorney been retained.

(4) Failure of a party to timely file a pleading or document or failure to comply with the procedures required by this administrative regulation may be treated by an administrative law judge or the board as prosecuting or defending without reasonable grounds.

Section 25. Payment of Compensation from Uninsured Employers' Fund. (1) Payment from the Uninsured Employers' Fund of compensation shall be made upon the determination by an administrative law judge that the responsible employer failed to secure payment of compensation as provided by KRS 342.340; and

(a) Thirty (30) days have expired since the finality of an award or issuance of an interlocutory relief order and a party in interest certifies that the responsible employer has failed to initiate payments in accordance with that award;

(b) Upon showing that the responsible employer has filed a petition under any section of the Federal Bankruptcy Code; or

(c) The plaintiff or any other party in interest has filed in the circuit court of the county where the injury occurred an action pursuant to KRS 342.305 to enforce payment of the award against the uninsured employer, and there has been default in payment of the judgment by the employer.

(2) The plaintiff may by motion and affidavit demonstrate compliance with this section and request an administrative law judge to order payment from the Uninsured Employers' Fund in accordance with KRS 342.760.

(3) This section shall not be construed to prohibit the voluntary payment of compensation by an employer, or any other person liable for the payment, who has failed to secure payment of compensation as provided by KRS Chapter 342, the compromise and settlement of a claim, or the payment of benefits by the Special Fund or Coal Workers' Pneumoconiosis Fund.

(4) Form UEF-P, Motion for Payment from Uninsured Employers' Fund, provided by the office may be used by the employee.

Section 26. Forms. The Office of Workers' Claims shall not accept applications or forms in use prior to the forms required by and incorporated by reference in this administrative regulation. Outdated applications or forms submitted shall be rejected and returned to the applicant or person submitting the form. If the application or form is resubmitted on the proper form within twenty (20) days of the date it was returned, the filing shall date back to the date the application or form was first received by the executive director. Otherwise, the date of the second receipt shall be the filing date.

Section 27. Incorporation by Reference. (1) The following materials are incorporated by reference.

(a) Form 101, "Application for Resolution of Injury Claim", (revised April 2006 [June, 2006]), Office of Workers' Claims;

(b) Form 102, "Application for Resolution of Occupational Disease Claim", (revised June, 2005), Office of Workers' Claims;

(c) Form 103, "Application for Resolution of Hearing Loss Claim", (June 2005 Edition), Office of Workers' Claims;

(d) Form 104, "Plaintiff's Employment History", (January 1, 1997 Edition), Office of Workers' Claims;

(e) Form 105, "Plaintiff's Chronological Medical History", (January 1, 1997 Edition), Office of Workers' Claims;


(g) Form 107-I, "Medical Report - Injury", (revised April 2005), Office of Workers' Claims;

(h) Form 107-P, "Medical Report - Psychological", (revised April 2006), Office of Workers' Claims;


(m) Form 110-F, "Agreement-Fatalities", (revised January 2005), Office of Workers' Claims;


(o) Form 110-0, "Application - Occupational Disease", (revised July 2005 [June, 2006]), Office of Workers' Claims;


(q) Form 111- Injury and Hearing Loss, "Notice of Claim Denial or Acceptance", (January 1, 1997 Edition), Office of Workers' Claims;
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Claims:
(i) Form 111-OD, "Notice of Claim Denial or Acceptance", (January 1, 1997 Edition), Office of Workers' Claims;
(ii) Form 115, "Social Security Earning Record Release Form", (January 1, 1997 Edition); and Office of Workers' Claims;
(iii) Form AW 1, "Average Weekly Wage Form", (January 1, 1997 Edition), Office of Workers' Claims;
(iv) [Lump-Sum Settlement Table], (April 15, 1897-Edition), Office of Workers' Claims;
(v) Six (6) Percent Present Value Table (May, 1997 Edition);
(vi) Form MIR-1, Motion for Interlocutory Relief (May 29, 1997 Edition);
(vii) [xx] Form MIR-2, Affidavit for Payment of Medical Expenses (May 29, 1997 Edition);
(viii) [xx] Form MIR-3, Affidavit for Payment of Temporary Total Disability (May 29, 1997 Edition);
(ix) [xx] Form MIR-4, Affidavit Regarding Rehabilitation Services (May 29, 1997 Edition);
(x) [xxx] Form VRT, Petition for Vocational Rehabilitation Training (April 2005 Edition);
(xi) [xxx] Form MTR-1, Motion to Reopen by Employee (May 29, 1997 Edition),
(xii) [xxx] Form MTR-2, Motion to Reopen KRS 342.732 Benefits (May 29, 1997 Edition);
(xiii) [xxx] Form MTR-3, Motion to Reopen by Defendant (May 29, 1997 Edition);
(xiv) [xxx] Form WVR, Joint Motion and Agreement to Waive Vocational Rehabilitation Evaluation (April 2005 Edition);
(xv) [xxx] Form UEP-P, Motion for Payment from Uninsured Employers' Fund (April 2005 Edition); and
(xvi) [xxx] Form 11, Motion to Substitute Party and Continue Benefits (January 31, 2005).
(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of Workers' Claims, Prevention Park, 657 Chamberlin Avenue, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

WILLIAM P. EMRI, Executive Director
APPROVED BY AGENCY: June 8, 2006
FILED WITH LRC: June 9, 2006 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 21, 2006, at 10 a.m. ET at the offices of the Office of Workers' Claims, Prevention Park, 657 Chamberlin Avenue, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify the agency in writing 5 workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be 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 July 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: Carla H. Montgomery, General Counsel, Office of Worker's Claims, Prevention Park, 657 Chamberlin Avenue, Frankfort, Kentucky 40601, phone (502) 564-5550, ext. 4464, fax (502) 564-0681.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Carla H. Montgomery
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation sets forth the procedures used to adjudicate a worker's compensation injury claim.
(b) the necessity of this administrative regulation: It is necessary for the prompt, orderly resolution of claims. Procedures must be established to fairly and timely adjudicate claims.
(c) How this administrative regulation conforms to the content of the authorizing statutes: The authorizing statute requires the

executive director to set forth procedures to resolve claims.

(2) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The entire adjudicative process for injured workers is controlled by this regulation. The procedures assist injured workers and carriers to get through the claims process in an orderly, timely fashion.

(3) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: The amendments are mostly housekeeping-cleanup issues. We will delete any reference to lump sum of 5% tables which are not used and the discount is set by statute, KRS 342.285(3). Section 211(2)(b) deletes a reference to subsection (2) of CR 54.02 which is inapplicable. Our agency is deleting references to the use of unpublished decisions and referring to Civil Rule 76.28(4)(c). Form 101 has been amended to ask claimants if they are interested in rehabilitation. Form 110-1 and Form 110-0 have been amended to clarify and simplify the agreement.
(b) The necessity of the amendment to this administrative regulation: It is imperative to eliminate any tables or incorrect references not being used by our agency. This regulation should be consistent with civil rules that attorneys must use to practice cases. Form 101 has been changed, so it must be amended in the regulation. Form 110-1 and 110-0 have been changed so they must be incorporated.
(c) How the amendment conforms to the content of the authorizing statutes: The amendments set forth and clarify the procedures for the resolution of claims which is the requirement of the authorizing statutes.

(4) How the amendment will assist in the effective administration of the statutes: The amendments will clarify and eliminate unnecessary language. It will bring the procedures into agreement with the civil rules of Kentucky.

(5) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All injured employees in Kentucky, employers with nonexempt employees, workers' compensation carriers, all governments with employees, and attorneys practicing workers' compensation cases.

(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: Attorneys will have a consistent regulation with civil rules to be followed in appeals. There should be no major impact with other clarifications made to the regulation.

(7) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: No cost.
(b) On a continuing basis: No additional costs.

(8) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Office of Workers' Claims budget will be used.

(9) Tiering: Is tiering applied? Tiering is not applied, because these amendments apply equally to all parties involved in a claim.

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department for Public Protection
Kentucky Horse Racing Authority
(AMENDMENT)

810 KAR 1:09. Jockeys and apprentices.

RELATES TO: KRS 230.210, 230.360
STATUTORY AUTHORITY: KRS 230.215(2), 230.280
NECESSITY, FUNCTION, AND CONFORMITY: KRS

- 245 -
230.215(2) authorizes the authority to promulgate administrative regulations prescribing conditions under which all horse racing is conducted. KRS 230.260 authorizes the authority to promulgate administrative regulations that regulate conditions under which thoroughbred racing shall be conducted in Kentucky and to establish safety standards for jockeys. This administrative regulation establishes the requirements for jockeys and apprentice jockeys.

Section 1. Probationary Mounts. Any person desiring to participate in this state as a jockey, who has not ridden in a race previously, may ride in three (3) races before applying for a license as a jockey or apprentice jockey if:

(1) The person is a licensed stable employee assistant trainer, or trainer with at least one (1) year of service with a racing stable;
(2) A licensed trainer certifies in writing to the stewards that the person has demonstrated sufficient horsemanship as evidenced by his control of the animal while mounting, riding, and dismounting in race and nonrace conditions to be permitted the probationary mounts;
(3) The starter has schooled the person in breaking from the starting gate with other horses and approves the person as capable of starting a horse properly from the starting gate in a race;
(4) The stewards determine that the person:
(a) Intends to become a licensed jockey;
(b) Possesses the physical ability to be a jockey; and
(c) Has demonstrated his ability to ride in a race without jeopardizing the safety of horses or other jockeys in the race; and
(5) The person has prior oral or written approval of the stewards.

Section 2. Qualifications for License. In addition to the requirements applicable to licensees under 810 KAR 1:025, a holder of a license as a jockey or apprentice jockey:

(1) Shall be sixteen (16) years of age or older and licensed under his legal name which shall be listed in the daily race program:
(2) Shall have served at least one (1) year with a racing stable;
(3) Shall have ridden in at least three (3) races; and
(4) Shall, if required by the stewards, provide a medical affidavit certifying the person is physically and mentally capable of performing the activities and duties of a licensed jockey.

Section 3. Amateur or Provisional Jockey. (1) An amateur wishing to ride in races on even terms with professional riders, but without accepting fees or gratuities therefor, shall:
(a) Be approved by the stewards as to competency of horsemanship;
(b) Be granted an amateur jockey’s license; and
(c) Have his amateur status duly noted on the daily race program.
(2) A licensed owner or licensed trainer, upon approval by the stewards, may be issued a provisional jockey’s license to ride his own horse or horse registered in his care as trainer.

Section 4. Apprentice Allowance. (1) Any person sixteen (16) years of age or older, who has not been licensed previously as a jockey in any jurisdiction, and who is qualified under Section 2 of this administrative regulation, may claim in all purse races except handicaps the following weight allowances:
(a) Ten (10) pounds until he has ridden five (5) winners;
(b) Seven (7) pounds until he has ridden an additional thirty-five (35) winners;
(c) If he has ridden a total of forty (40) winners prior to the end of one (1) year from the date of riding his fifth winner, he shall have an allowance of five (5) pounds until the end of that year; and
(d) If after one (1) year from the date of the fifth winner, the apprentice jockey has not ridden forty (40) winners, the applicable weight allowance shall continue for one (1) additional year from the date of the fifth winning mount, or until the 40th winning mount.
(2)(a) After the completion of conditions in subsection (1) of this section, a contracted apprentice may claim three (3) pounds for one (1) year if riding horses owned or trained by his original contract employer if his contract has not been transferred or sold since his first winner.
(b) The original contract employer shall be deemed the party to the contract who was the employer at the time of the apprentice jockey’s first winner.
(c) Apprentice allowance shall not be claimed for a period in excess of two (2) years from the date of the rider’s fifth winner unless an extension has been granted.
(3) An apprentice may enter into a contract with a licensed owner or licensed trainer qualified under Section 5 of this administrative regulation for a period not to exceed five (5) years.
(a) These contracts shall be:
1. Approved by the stewards;
2. Filed with the authority; and
3. Binding in all respects on the parties to the contract.
(b) An apprentice who has not entered into a contract pursuant to this subsection shall be given an apprentice jockey certificate.
(c) If an apprentice jockey is unable to ride for a period of seven (7) consecutive days or more because of service in the armed forces of the United States, physical disability, attendance in an institution of secondary or higher education, restrictions on racing, or other valid reason, the authority, upon recommendation of the stewards and after consultation with the racing entity which approved the original apprentice contract, may extend the time during which the apprentice weight allowance may be claimed for a period no longer than the period the apprentice rider was unable to ride.
(d) After completion of conditions in subsection (1) of this section, the rider shall be issued a license as a jockey before accepting subsequent mounts. Under these circumstances, the authority may waive collection of an additional license fee.

Section 5. Rider Contracts. (1) All contracts between an employer owner or trainer and employee rider shall be subject to the administrative regulations promulgated by the authority.
(2) All riding contracts for terms longer than thirty (30) days, and any amendments, cancellations, or transfers, shall be in writing with the signatures of the parties notarized, and shall be approved by the stewards and filed with the authority.
(3) The stewards may approve a riding contract and permit parties to participate in racing in this state if the stewards find that:
(a) The contract employer is a licensed owner or licensed trainer who owns or trains at least three (3) horses eligible to race at the time of the execution of the contract;
(b) The contract employer possesses the character, ability, facilities, and financial responsibility conducive to developing a competent race rider; and
(c) If it is a contract for an apprentice jockey, the contract provides for fair remuneration, adequate medical care, and an option equally available to both employer and apprentice jockey to cancel the contract after two (2) years from the date of execution.

Section 6. Restrictions as to Contract Riders. A rider shall not:
(1) Ride any horse not owned or trained by his contract employer in a race against a horse owned or trained by his contract employer;
(2) Ride or agree to ride any horse in a race without consent of his contract employer;
(3) Share any money earned from riding with his contract employer; and
(4) Accept any present, money, or reward of any kind in connection with his riding of any race except through his contract employer.

Section 7. Calls and Engagements. (1) Any rider not prohibited by prior contract may agree to give first or second call on his racing services to any licensed owner or trainer.
(2) These agreements, if for terms of more than thirty (30) days, shall be in writing, approved by the stewards, and filed with the authority.
(3) Any rider employed by a racing stable on a regular salaried basis shall not ride against the stable which employs him.
(4) An owner or trainer shall not employ or engage a rider to prevent him from riding another horse.

Section 8. Jockey Fee. (1) The purpose of this section is not to
establish a minimum or maximum fee, but to provide a fee if the parties have not made any other agreement to the contrary. The fee to a jockey, in the absence of special agreement, shall be as follows:

(a) Purse $599 and under; winning mount, $33; second place mount, $33; third place mount, $33; losing mount $33.
(b) Purse $600 to $699; winning mount $36; second place mount, $33; third place mount, $33; losing mount $33.
(c) Purse $700 to $1,499; winning mount, ten (10) percent of win purse; second place mount $33; third place mount $33; losing mount $33.
(d) Purse $1,500 to $1,999; winning mount, ten (10) percent of win purse; second place mount $35; third place mount $33; losing mount $33.
(e) Purse $2,000 to $3,499; winning mount, ten (10) percent of win purse; second place mount, $45; third place mount, $40; losing mount, $38.
(f) Purse $3,500 to $4,999; winning mount, ten (10) percent of win purse; second place mount, $55; third place mount, $45; losing mount, $40.
(g) Purse $5,000 to $9,999; winning mount, ten (10) percent of win purse; second place mount, $65; third place mount, $55; losing mount, $45.
(h) Purse $10,000 to $14,999; winning mount, ten (10) percent of win purse; second place mount, five (5) percent of second place purse; third place mount, five (5) percent of third place purse; losing mount, $50.
(i) Purse $15,000 to $24,999; winning mount, ten (10) percent of win purse; second place mount, five (5) percent of second place purse; third place mount, five (5) percent of third place purse; losing mount, $55.
(j) Purse $25,000 to $49,999; winning mount, ten (10) percent of win purse; second place mount, five (5) percent of second place purse; third place mount, five (5) percent of third place purse; losing mount, $65.
(k) Purse $50,000 to $99,999; winning mount, ten (10) percent of win purse; second place mount, five (5) percent of second place purse; third place mount, five (5) percent of third place purse; losing mount, $80.
(l) Purse $100,000 and up; winning mount, ten (10) percent of win purse; second place mount, five (5) percent of second place purse; third place mount, five (5) percent of third place purse; losing mount, $105.

(2) A jockey fee shall be considered earned by a rider if he is weighed out by the clerk of scales except:

(a) If a rider does not weigh out and ride in a race for which he has been engaged because an owner or trainer engaged more than one (1) rider for the same race, the owner or trainer shall pay an appropriate fee to each rider engaged for the race;
(b) If a rider capable of riding elected to take himself off the mount without, in the opinion of the stewards, proper cause; or
(c) If a rider is replaced by the stewards with a substitute rider for a reason other than a physical injury suffered by the rider during the time between weighing out and start of the race.

Section 9. Revised Order of Finish After Race Is Declared Official. If a winning purse is forfeited through subsequent ruling of the stewards or the authority, after the result has originally been made official, the winning fee shall be paid to the jockey whose mount is ultimately adjudged the winner, and the original winner shall be credited only with a losing mount.

Section 10. Duty to Fulfill Engagements. Every rider shall fulfill his duly scheduled riding engagements, unless excused by the stewards. A rider shall not be required to ride a horse he believes to be unsound, nor over a racing strip he believes to be unsafe, but if the stewards find a rider's refusal to fulfill a riding engagement is based on a personal belief unwarranted by the facts and circumstances, the rider may be subject to disciplinary action.

Section 11. Presence in Jockey Room. (1) Each rider who has been engaged to ride in a race shall be physically present in the jockey room no later than one (1) hour prior to post time for the first race on the day he is scheduled to ride, unless excused by the stewards, or the clerk of scales; and upon arrival shall report to the clerk of scales his engagements. If a rider fails for any reason to arrive in the jockey room prior to one (1) hour before post time of a race in which he is scheduled to ride, the clerk of scales shall so advise the stewards who may name a substitute rider and shall cause a public announcement to be made of the rider substitution prior to opening of wagering on the race.

(2) Each rider reporting to the jockey room shall remain in the jockey room until he has fulfilled all his riding engagements for the day, except to ride in a race, or except to view the running of a race from a location approved by the stewards. A rider shall not have contact or communication with any person outside the jockey room other than an owner or trainer for whom he is riding, a racing official, or a representative of the regular news media, until the rider has fulfilled all his riding engagements for the day.

(3) The association shall be responsible for security of the jockey room so as to exclude all persons except riders scheduled to ride on the day's program, valets, authorized attendants, racing officials, duly accredited members of the news media, and persons having special permission of the stewards to enter the jockey room.

(4) Any rider intending to discontinue riding at a race meeting prior to its conclusion shall notify the stewards of his intent to depart after fulfilling his final riding engagement of the day.

Section 12. Weighing Out. (1) Each rider engaged to ride in a race shall report to the clerk of scales for weighing out not more than one (1) hour and not less than fifteen (15) minutes before post time for each race in which he is engaged to ride, and when weighing out, the rider shall declare overweight, if any.

(a) A rider shall not pass the scale with more than one (1) pound overweight, without consent of the owner or trainer of the horse he is engaged to ride; and
(b) A rider shall not pass the scale with more than five (5) pounds overweight.

(3) A horse shall not be disqualified because of overweight carried.

(4) Whip, blinkers, number cloth, bridle, goggles, and rider's safety helmet shall not be included in a rider's weight.

Section 13. Wagenen. A rider shall not place a wager, cause a wager to be placed on his behalf, or accept any ticket or winnings from a wager on any race except on his own mount, and except through the owner or trainer of the horse he is riding. The owner or trainer placing wagers for his rider shall maintain a precise and complete record of all of these wagers, and the record shall be available for examination by the stewards at all times.

Section 14. Attire. (1) Upon leaving the jockey room to ride in any race, each rider shall be neat and clean in appearance and wear the traditional jockey costume with all jacket buttons and catches fastened.

(2) Each jockey shall wear:
(a) The cap and jacket racing colors registered in the name of the owner of the horse he is to ride;
(b) Stock tie;
(c) White or light breeches;
(d) Top boots;
(e) Safety helmet that meets the standards of the American Society for Testing and Materials (ASTM) F1163-00;
(f) A safety vest which shall meet the standards of the American Society for Testing and Materials (ASTM) F1397-98; and
(g) A number on his right shoulder corresponding to his mount's number as shown on the saddle cloth and daily racing program.

(3) A safety vest shall not weigh more than two (2) pounds and shall not be included in the jockey's weight when weighing out to race.

(4) The clerk of scales and attending valet shall be held jointly responsible with a rider for his neat and clean appearance and proper attire.

Section 15. Advertising. (1) A jockey shall not wear advertising or promotional material of any kind whether for a nonprofit or for-

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prof entity on clothing within one (1) hour of or during a race, unless:
(a) The material advertises or promotes the Jockey's Guild by displaying the picture of a jockey's boot or the picture of a wheelchair. The material shall not advertise, promote, or refer to an entity other than the Jockey's Guild [i.e. a recognized logo of an entity representing the jockeys]; or
(b) The following criteria are met:
1. The material meets the advertising standards listed in subsection (2) of this section; and
2. The jockey obtains the written approval established in subsection (3) of this section.

(2) Advertising or promotional material displayed on jockey clothing shall:
(a) Not conflict with, conflict with, or infringe upon sponsorship agreements applicable to the race or to the race meet in progress; and
(b) Comply with the following size restrictions:
1. A maximum of thirty-two (32) square inches on each thigh of the pants on the outside side between the hip and knee and ten (10) square inches on the rear of the pant at the waistline at the base of the spine;
2. A maximum of twenty-four (24) square inches on boots and leggings on the outside of each nearest the top of the boot; and
3. A maximum of six (6) square inches on the front center of the neck area (on a turtleneck or other undergarment).
(3) (a) Approval in writing of all three (3) of the following shall be required:
1. The managing owner of the horse, or the owner's duly authorized agent;
2. The licensed racing association, which shall grant approval only if it determines the material meets the standards in subsection (2)(a) of this section; and
3. The stewards, who shall grant approval only if they determine the material meets the standards in subsection (2)(b) of this section.
(b) Written approval shall be evidenced by completion and return of the "Request to Wear Advertising and Promotional Materials." The form shall be completed and submitted to the stewards not later than the time of entry of the subject race.
(4) As a condition for approval of advertising or promotional material, either the owner, the stewards, or the licensed racing association, in their discretion, may require a personal viewing of the proposed material as it is to be displayed.
(5) This administrative regulation shall not prohibit the sponsor of a licensed racing association race or race meeting from displaying advertising or promotional material on a track saddlecloth if it does not interfere with the clear visibility of the number of the horse;
(6) Advertising content other than that approved in this administrative regulation shall not be permitted.

Section 16. Viewing Films or Tapes of Races. (1) Every rider shall be responsible for checking the film list posted by the stewards in the jockey room the day after riding in a race.
(2) The posting of the film list shall be considered as notice to all jockeys whose names are listed to present themselves at the time designated by the stewards to view the patrol films or video tapes of races.
(3) Any jockey may be accompanied by a representative of the jockey organization of which he is a member in viewing the films, or with the stewards' permission, be represented at the viewing by his designated representative.

Section 17. Material Incorporated by Reference. (1) The following material is incorporated by reference:
(a) "Standard Specification for Protective Headgear Used in Horse Sport and Horseback Riding, January 10, 2000";
(b) "Standard Specification for Body Protectors Used in Horse Sports and Horseback Riding, November 1999";
(c) "Request to Wear Advertising and Promotional Material", March 2005.
(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Racing Authority, 4063 Iron Works Parkway, Building B, Lexington, Kentucky, Monday through Friday, 8 a.m. to 4:30 p.m.
(3) This material may also be obtained from the Kentucky Horse Racing Authority Web site at www.khra.gov.

LAJUANA S. WILCHER, Secretary
WILLIAM STREET, Chairman
APPROVED BY AGENCY: June 6, 2006
FILED WITH LRC: June 15, 2006 at 11 a.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 24, 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 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 shall 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 July 31, 2006. Send written comments of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Jim Gallagher, Executive Director, Kentucky Horse Racing Authority, Kentucky Horse Park, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, phone (502) 245-2040.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jim Gallagher,
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation establishes the requirements for jockeys and apprentice jockeys, including experience, fees, contracts, weighing restrictions, rules regarding wagering, and proper jockey attire.
(b) The necessity of this administrative regulation: This administrative regulation is necessary in order to implement the provisions of KRS Chapter 230 and ensure professionalism and competence among jockeys within the thoroughbred industry. Section 15 of this regulation specifically concerns the wearing of advertising by jockeys. This section was promulgated in 2005 in order to implement a 2004 decision of the US District Court that invalidated an earlier provision of this regulation which banned jockeys outright from wearing any advertising while riding their clothing during thoroughbred races. While ruling that Kentucky's total and unconditional prohibition against the wearing of advertising by jockeys violated the First Amendment to the US Constitution, the court nevertheless clearly upheld the Authority's right and responsibility to establish reasonable regulations governing this matter.
(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 230.260(1) vests the Kentucky Horse Racing Authority with "jurisdiction and supervision over all horse race meetings in this Commonwealth and over all associations and all persons on association grounds..." Additionally, KRS 230.215(2) vests in the Authority "forceful control of horse racing in this Commonwealth with plenary power to promulgate administrative regulations prescribing conditions under which all legitimate horse racing and wagering thereon is conducted in the Commonwealth..."
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation establishes, among other things, standards for the selection and licensing of jockeys and apprentice jockeys in Kentucky. The Authority is charged with the responsibility of overseeing and protecting the health and vitality of racing in this state, and that clearly includes standards relating to the conduct of jockeys. With regard to Section 15 of this regulation specifically, it is critical that the Authority establish and maintain parameters and guidelines con-
ceming the wearing of advertising by jockeys. The jockeys have the right to wear advertising and to display the logo of the Jockeys’ Guild (since, as the judge stated in his opinion, the Guild strives to improve the working conditions of jockeys and to assist disabled jockeys), but the state has a corresponding duty to safeguard the image and integrity of racing. Pursuant to the principle that critical business and sponsorship interests, vital to the survival of racing in this state, are protected. These protections apply to both commercial and non-commercial interests, to both nonprofit and for profit entities. The jockeys are not required to obtain approval before wearing materials depicting the designated Guild logos (so long as no other entity is promoted or referred to), but they are required to obtain approval before wearing materials that promote other entities, even if those entities are nonprofit.

(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 amendment will enable the regulation to comport more fully with the intention and thrust of the opinion of the US District Court in 2005. In that opinion, Judge Heyburn ruled that the Jockeys’ Guild patch constituted protected private speech. The judge clearly differentiated between the wearing of the patch and traditional commercial advertising which was subject of a separate lawsuit also pending before him at that time. The judge stated, “By wearing the patch... Plaintiffs do not convey a message that is borne out of an economic motivation or used for a primarily advertising purpose. Any such impact would be purely incidental.”

(b) The need for the amendment: The amendment is intended to improve working conditions of all jockeys and, more particularly, to improve the lives of disabled jockeys. The court concluded that the wearing of the Jockeys’ Guild patch was “not commercial in nature.”

As a result of the opinion, the Authority amended its regulation and allowed jockeys to wear “a recognized logo of an entity representing the jockeys’ welfare and interest in all thoroughbred and races in Kentucky. That standard differed from the rule promulgated by the Authority with respect to commercial advertising. Before wearing commercial advertising, jockeys are required to receive approval from the owner, the racing association and the stewards.

A situation has now arisen; however, which necessitates this amendment to the regulation. Prior to the 2006 Kentucky Oaks and Kentucky Derby, jockeys sought to wear advertising on their breeches for an entity known as Jockeymedia.com which, on its official Web site, promotes itself as being the “new thoroughbred advertising media that delivers the ultimate brand awareness.” It is clear that this entity is commercial in nature. Its stated purpose, according to its own Web site, is to “maximize your brand awareness among national and regional TV audiences.” While the cameras focus tightly on the jockeys, the advertiser will receive record brand visibility and media coverage. The problem, however, as it pertains to the present regulation, is that Jockeymedia.com has been recognized as an official logo of the Jockeys’ Guild and displays the official Jockeys’ Guild emblem. For that reason, Jockeymedia.com, although clearly a commercial enterprise, may promote itself, under the regulation as it is currently written, by advertising on the clothing of jockeys without the necessity of the jockey receiving approval beforehand. It was the Authority’s intent, when it promulgated the amendment to 810 KAR 1.009 in 2005, to differentiate, just as the court did, between materials that promote charitable, philanthropic or benevolent endeavors (such as the Guild’s efforts on behalf of disabled jockeys) and materials that promote traditional commercial endeavors. The opinion of the federal court, the Authority submits, was never intended to allow unconditional commercial advertising free of all constraints or reasonable regulation. By merely using the logo of the Jockeys’ Guild and claiming to be a recognized logo of it, Jockeymedia.com has been able to sidestep the Authority’s valid and reasonable regulation regarding commercial advertising. This amendment to the regulation will close this loophole by requiring it clear that material that refers to an entity other than the Jockeys’ Guild will be considered commercial advertising and will require the requisite approval before being worn by jockeys. This amendment is consistent with, and will implement the opinion of the federal court which clearly sought to differentiate between the wearing of material that constitutes commercial speech and the wearing of material that seeks to promote charitable or philanthropic aims aligned with the Jockeys’ Guild.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 230.215(2) vests in the Authority the “forceful control of horse racing in the Commonwealth with plenary power to promulgate administrative regulations proscribing conditions under which all legitimate horse racing and wagering therein is conducted in the Commonwealth.” Clearly, this amendment to 811 KAR 1.009 conforms to and is consistent with the authorizing statute quoted above.

(d) How the amendment will assist in the effective administration of the statutes: The Authority is statutorily charged with the responsibility of policing and regulating horse racing in Kentucky. This amendment will enable the Authority to carry out that responsibility while at the same time fully complying with the clear dictate of the federal court as it relates to commercial advertising.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation affects jockeys, racing associations, and owners of racehorses.

(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: It is not anticipated that the above groups will be significantly impacted by this amendment to the regulation. Jockeys will continue to have the right to display the designated Jockeys’ Guild logos (the boot or the wheelchair) on their clothing without condition as long as those logos are being displayed for the sole purpose of promoting the Guild and are not being utilized to promote a commercial enterprise.

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

(a) Initially: There will be no increase in cost to the Commonwealth associated with the implementation of this amendment.

(b) On a continuing basis: No increase in cost.

(6) What is the source of the funding to be used for the implementation of the administrative regulation: There will be no additional costs incurred in implementing this amendment.

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

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

(9) TIERING: Is tiering applied: No, tiering does not apply to this regulation.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Community Based Services
Division of Policy Development
(Amendment)

921 KAR 1:410. Child support collection and enforcement.

VOLUME 33, NUMBER 1 – JULY 1, 2006

Pub L 109-171

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the secretary to promulgate administrative regulations necessary to implement programs mandated by federal law or to qualify for the receipt of federal funds and necessary to cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. [194A-2004-226, effective July 9, 2004, reorganized the Cabinet for Health and Family Services and placed the Department for Community-Based Services under the Cabinet for Health and Family Services.] KRS 205.712(2) requires the Cabinet for Health and Family Services to collect and enforce child support obligations and authorizes the cabinet to promulgate administrative regulations to implement its duties. This administrative regulation establishes procedures for collection of child support payments, including means of enforcement and management of disputes and appeals.

Section 1. Collection. (1) Income withholding shall be used for collection of an assigned support obligation or health insurance coverage as defined by KAR 1:001, Section 1(3), (24), and (29).

(2) The cabinet shall notify an employer or other income source of a request for income withholding for an assigned support obligation or health insurance coverage within:
   (a) Fifteen (15) calendar days of a request for income withholding with a:
      1. *CS-89, Order/Notice to Withhold Income for Child Support*; and
      2. *CS-72, National Medical Support Notice*; or
   (b) Two (2) days after entry of an obligation into the State Directory of New Hires for health insurance with the notice specified in paragraph (a) of this subsection.

(3) The employer or other income source shall:
   (a) Implement Income withholding no later than the first pay period that occurs after fourteen (14) working days following the date the [*CS-89, Order/Notice to Withhold Income for Child Support*] is mailed; and
   (b) Transfer the [*CS-72, National Medical Support Notice*] to the employer's health plan administrator within twenty (20) working days after receipt of the notice.

(4) The cabinet shall notify the obligor within fifteen (15) calendar days, in accordance with KRS 405.467(4), of a request for income withholding for an assigned support obligation or health insurance coverage with a [*CS-89, Order/Notice to Withhold Income for Child Support*], and *CS-164, Notice of Income Withholding* that:
   (a) An obligor may contest the withholding by requesting an administrative hearing as specified in Section 4 of this administrative regulation; and
   (b) If the obligor does not contest income withholding for an assigned support obligation or ordered health insurance coverage, as specified in paragraph (a) of this subsection, the income withholding [and ordered health-care coverage] shall apply to the current and any subsequent employer.

(5) The health plan administrator shall notify the obligor and the cabinet of the health insurance coverage within forty (40) working days of receipt of the [*CS-72, National Medical Support Notice*].

(6) If an obligor terminates employment, the employer or other income source shall take action pursuant to KRS 405.465(5).

(7) An obligor shall inform the cabinet of any changes in:
   1. A current employer or source of income; and
   2. Access to health insurance.

(8) If an obligor transfers or assigns income or income-producing property after receipt of notification of a child support obligation, the cabinet shall take action pursuant to KRS 405.060.

(9) If only an arrearage amount is subject to withholding, the arrearage payment and frequency of payment shall be equal to the payment and frequency last designated by judicial or administrative order.

(10) The employer or other income source shall, within seven (7) working days from the date an amount is withheld, forward:
   (a) An assigned support obligation payment to the state disbursement unit in the child support agency; or
   (b) A medical insurance premium to the health insurance carrier or notify the cabinet prior to payment if more than one (1) option is available under a plan.

(11) The employer or other income source shall:
   (a) Shall include on the transmittal to the cabinet the obligor's:
      1. Name;
      2. Social Security number; and
      3. Cabinet-assigned case number; and
   (b) Shall not be required to change payroll frequency but shall withhold at least once monthly; or
   (c) May combine amounts due the cabinet into one (1) payment, if the amount attributable to each obligor is identified by:
      a. Name;
      b. Social Security number; and
      c. Cabinet-assigned identification number.

(12) Withholding of unemployment compensation.
   (a) The cabinet, through an agreement with the Education Cabinet, Office of Employment and Training, shall collect a child support payment from an obligor receiving unemployment compensation.
   (b) The cabinet shall provide a *CS-73, Unemployment Insurance Letter*, and *CS-76, Unemployment Insurance Notice of Withholding* to an obligor notifying that:
      1. Current child support obligation or delinquency is owed; and
      2. The cabinet has completed a CS-75[*, Unemployment Insurance Notice of Withholding*] to order withholding of:
         a. Fifty (50) percent of the unemployment benefit; or
         b. The amount of the assigned support obligation, whichever is less; and
   (c) All the obligor may contest the withholding by requesting an administrative hearing as specified in Section 4 of this administrative regulation.

Section 2. Enforcement. (1) Federal income tax refund offset and administrative offset.
   (a) A public assistance case [for past-due child support, medical support ordered by specific dollar amount, spousal support, Kentucky Transitional Assistance Program, or KT-101, Kentucky Care, or foster care child support] shall qualify for offset if there is:
      1. A court-ordered or administratively-established support obligation;
      2. An assignment of support to the cabinet;
      3. An arrearage of at least $150 delinquent; and
      4. Cabinet verification of the accuracy of the obligor's name and Social Security number.
   (b) Nonpublic assistance case involving past-due child support, a specific dollar amount of medical support, or spousal support shall qualify for offset if the:
      1. Cabinet is enforcing a court-ordered or administratively-established support obligation;
      2. Cabinet verifies accuracy of the obligor's name and Social Security number;
      3. Nonpublic assistance arrearage owed is equal to or greater than $500, exclusive of fees, court costs, or other non-child support debt; and
      4. Cabinet has a copy of the:
         a. Current support order; and
         b. Payment record; and
     5. Arrearage is owed on behalf of a child who is a minor as of December 31 of the year in which the case is submitted for offset.
   (c) If a case is submitted for federal tax refund offset, the case may [shall] be subject to federal administrative offset of non-exempt federal payments pursuant to 42 U.S.C. 664 and C.F.R. 303.7.
   (d) Nonexempt federal payments shall be denied to individuals owning a child support arrearage as defined in paragraphs (a) and (b) of this subsection.
   (e) State income tax refund offset.
   (a) A public assistance case for past-due child support, medical support ordered by specific dollar amount, spousal support, K-
TAP, Kinship Care, or foster care child support shall qualify for offset if:  
1. There is an arrearage on a legally assigned [established child and medical] support obligation;  
2. The obligor’s name and Social Security number are known;  
3. The arrearage is verified as accurate; and  
4. The amount of the arrearage is at least $150.  
(b) A nonpublic assistance support arrearage shall qualify for offset if the:  
1. Case meets the criteria specified in subsection (1)(a)4, and 4 of this section; and  
2. Required arrearage amount is not less than $150.  
(3) Tort claim settlements and administrative offset. The cabinet shall:  
(a) Identify a child support case for administrative offset, including tort claim settlements, if a child support case meets the criteria specified in subsection (1)(a)4 of this section;  
(b) Send by mail form “CS-122, Advance Notice of Intent to Collect Past-Due Support” to an obligor notifying that the obligor may contest the accuracy of a past due amount by requesting an administrative hearing as specified in Section 4 of this administrative regulation; and  
(c) Notify the Finance and Administration Cabinet to offset administrative payments, including tort claim settlements, in accordance with KRS 205.712(17), for a case identified in paragraph (a) of this subsection.  
(4) Financial Institution Data Match. The cabinet shall:  
(a) Use the following criteria to identify a case for seizure of assets:  
1. The obligor owes an arrearage equal to at least six (6) months obligation or $1,000, whichever is less; and  
2. The obligor is not complying with the most recent assigned support order;  
(b) Issue a “CS-68, Order to Withhold”, and “CS-69, Answer to Withhold”, to a financial institution holding the obligor’s account or accounts;  
(c) Issue a [“CS-68, Order to Withhold”] and “CS-121, Noncustodial Parent’s Answer to Withhold” to the obligor by certified mail within two (2) working days;  
1. After both of the forms specified in paragraph (b) of this subsection are issued to the financial institution; and  
2. Notifying the obligor that to retain an account with a financial institution an order to withhold may be contested by requesting an administrative hearing as specified in Section 4 of this administrative regulation;  
(d) Refer the case for parent-locator service, if a [“CS-68, Order to Withhold”] is returned and the forwarding address for the obligor is unknown;  
(e) Send to the financial institution a “CS-83, Order to Deliver” if:  
1. There is no dispute; or  
2. The obligor does not take an action specified in paragraph (g) of this subsection;  
(f) Send within twenty (20) days of an administrative hearing decision, a:  
1. [“CS-63, Order to Deliver”] to the financial institution, if a case qualifies for the withhold and deliver process; or  
2. “CS-70, Release of Order to Withhold” to the financial institution and an obligor, if a case does not qualify for the withhold and deliver process; and  
(g) Notify an obligor that to retain an account with a financial institution, an obligor shall take one (1) of the following actions within twenty (20) working days from the date of receipt or [“CS-68, Order to Withhold”]:  
1. Pay the total arrearage;  
2. Post a bond for the total arrearage; or  
3. Sign a “CS-78, Payment Agreement” to pay within fifteen (15) days:  
   a. Current support;  
   b. A $1000 lump sum payment which may be negotiated if the:  
   1. Places an unjust burden on the obligor; or  
   2. Prevents the obligor from obtaining or retaining employment;  
   3. A negotiated percentage of the remaining arrearage balance which shall be agreed upon by the obligor and the cabinet; and  
   4. An arrearage payment for subsequent months as determined by one (1) of the following:  
      (i) An amount established by a court order;  
      (ii) If there is no court order for arrearage judgment, the payment shall be twenty-five (25) percent of the court-ordered current support obligation; or  
      (iii) If current support is not owed, the minimum payment shall be equal to the most recent court-ordered support obligation.  
(5) If a seizure of assets request is identified, as specified in subsection (4)(a) of this section, and is initiated from outside the commonwealth as a result of a Financial [Federal] Institution Data Match, the cabinet shall use the Administrative Enforcement of Interstate Cases process to issue:  
(a) A [“CS-68, Order to Withhold”] and a [“CS-69, Answer to Withhold”] to a financial institution holding the obligor’s account or accounts;  
(b) A [“CS-68, Order to Withhold”] and a “CS-121.1 Noncustodial Parent’s Answer to Withhold Limited Enforcement of Interstate Cases”, to the obligor by certified mail within two (2) working days after both of the forms specified in paragraph (a) of this subsection are issued to the financial institution; and  
(c) To the financial institution:  
1. “CS-83, Order to Deliver” if there is no dispute; or  
2. “CS-70, Release of Order to Withhold” if the initiating state request is withdrawn.  
(6) Lump sum payment:  
(a) In accordance with KRS 405.465(6), an employer shall provide written notification to the Department for Community Based Services, Division of Child Support, of any lump sum payment that is not already subject to the employee’s assigned support obligation and wage withholdings. The written notification:  
1. Shall include the:  
   a. Name of the employee;  
   b. Social Security number of the employee;  
   c. Amount of the lump sum payment; and  
   d. Intended payment date; and  
2. May include multiple employees on one (1) written notification if information in accordance with subparagraph (a) of this paragraph is provided for each employee.  
(b) Upon receipt of a written request, pursuant to paragraph (1) of this subsection, the Division of Child Support shall determine if:  
1. Employee owes an arrearage on an assigned support obligation; and  
2. Requirements of KRS 405.465(1) are met:  
   a. If the employee owes no arrearage, the Division of Child Support or its designee may notify the employer to release the lump sum payment to the employee;  
   b. If the employee owes an arrearage, pursuant to subparagraph (b) of this subsection, the Division of Child Support or its designee shall initiate:  
      1. A court order to the employer in accordance with KRS 405.465; or  
      2. An administrative order in accordance with KRS 405.470;  
   (a) If the Division of Child Support or its designee does not contact the employer, the employer shall:  
      1. Hold the lump sum for thirty (30) days. In accordance with KRS 405.465(6)(a), from the projected date of its release; and  
      2. Release the lump sum payment to the employee after the thirtieth day, unless the employee has received from the Division of Child Support or its designee a court order or an administrative order to withhold any portion of the lump sum payment.  
Section 3. Administrative Enforcement Actions. (1) If an obligor owes an arrearage equal to or greater than one (1) month’s obligation, the cabinet may [shall]:  
(a) File a lien on the obligor’s interest in personal or real property by:  
   a. Within the commonwealth, as established in KRS 205.745; or  
   b. Outside the commonwealth, as established in KRS 206.7785;  
   (b) “CS-92, Intrastate Notice of Lien” for property within Kentucky, in accordance with KRS 205.745; or  
   b. “CS-85, Notice of Lien” for property outside Kentucky.
tucky in accordance with KRS 205.7785; and
2. Provide a "CS-119, Noncustodial Parent's Notice of Lien" to
the obligor notifying that:
   a. The obligor may contest the lien as specified in Section 4 of
this administrative regulation;
   b. A transfer of property in order to avoid payment shall be
considered an act of fraud, in accordance with KRS 405.060(2); and
   c. If the obligor makes full payment of the arrearage, including
interest, penalties, and fees, a "CS-120, Release of Lien", shall be
provided to the obligor;
   (b) 1. Provide a [CS-122,[Advance Notice of Intent to Collect
Past-Due Support]*] to the obligor notifying that:
      a. Past-due amounts shall be reported to a certified consumer
reporting agency; and
   b. The obligor may contest the accuracy of the information by
requesting an administrative hearing as specified in Section 4 of
this administrative regulation;
2. Not submit the obligor's information for inclusion on the peri-
odic report made available to certified consumer reporting agen-
cies as specified in KRS 205.768, if:
   a. The advance notice is returned as undeliverable; and
   b. Subsequent location efforts are unsuccessful; and
3. Submit the obligor's name and arrearage amount for inclu-
sion on a periodic report made available to a certified consumer
reporting agency, if the obligor does not pay in full or appeal within
thirty (30) calendar days from the date of notice.
(2) If an obligor owes an arrearage equal to or greater than six
(6) months of a determined support obligation, as established in
KRS 205.712(9) and (10), the cabinet shall:
   a. Conduct an examination against one (1) or more of the follow-
ing:
      1. Professional license or certificate;
      2. Occupational license or certificate;
      3. Recreational license;
      4. Sporting license; or
      5. Driver's license, for arrearages that have accrued since
January 1, 1994;
   (b) Send to the obligor, by certified mail:
      1. A "CS-44, Notice of Intent to Request Denial or Suspense-
ion", which includes a section for an Answer to Notice of Intent;
      2. Notification that the obligor may request an administrative
hearing contesting the action as specified in Section 4 of this ad-
ministrative regulation; and
      3. Notification that the "CS-63, Notice to Licensing/Certification
Board or Agency" shall be rescinded if the obligor:
         a. Takes action as specified in Section 2(4)(g)3 of this admin-
istrative regulation; or
         b. Complies with a subpoena or warrant, in accordance with
KRS 205.712(11);
   (c) Refer the case for parent-locator service, if the "CS-44 [re-
notice-of-intent]" is returned and the forwarding address unknown;
   (d) Send to the issuing agency or board of licensure or certifi-
cation a [CS-63, Notice to Licensing/Certification Board or
Agency,]* if:
      1. There is no dispute; or
      2. The obligor does not take an action specified in paragraph
(b)3 of this subsection;
   (e) Send to the issuing agency or board of licensure or certifi-
cation a [CS-63, Notice to Licensing/Certification Board or
Agency,]*, within twenty (20) days of the date of administrative
hearing decision, if an administrative hearing results in a finding
that the case qualifies for:
      1. A license or certificate denial;
      2. Suspension; or
      3. Revocation; and
   (f) Notify the issuing board or agency that the obligor is no
longer deemed by the cabinet to be subject to denial, suspension,
or revocation, if the obligor:
      1. Takes action as specified in Section 2(4)(g)3 of this admin-
istrative regulation; or
      2. Complies with a subpoena or warrant, in accordance with
KRS 205.712(11);
   (3) If an obligor owes an arrearage equal to or greater than six
(6) months obligation of an assigned support obligation and fails to
comply with a subpoena or warrant relating to a child support pro-
ceeding, the cabinet may enforce a lien on a vehicle registered to
the obligor by immobility with a vehicle boot as established in
KRS 205.745(9).
   a. The cabinet shall give prior notice in accordance with para-
graph (b)1 of this subsection to the obligor of the date the appro-
priate local law enforcement personnel intend to boot a vehicle.
   b. The delinquent obligor shall:
      1. Have (10) ten days to respond to a notice of intent to boot a
vehicle; and
      2. Take action as specified in Section 2(4)(g)3 of this admin-
istrative regulation to release the vehicle boot.
   (c) If the requirements in paragraph (b) are met the:
   1. Obligor shall pay the:
      a. Forty (40) dollar cost of the removal of a vehicle boot to the
appropriate local law enforcement personnel; and
      b. Cost of towing and storage if a charge is incurred; and
   2. Cabinet shall send a cancellation notice to the obligor and to
the appropriate local law enforcement personnel to terminate the
booting of the vehicle.
(4) A newspaper publication of a list of delinquent obligors, as
established in KRS 405.411, provided by the Cabinet for Health
and Family Services, Department for Community Based Services,
Division of Child Support, shall:
   a. Identify an obligor as specified by subsection (7)(a) of this
section;
   b. Include the name, last known address and the amount
owed of the obligor meeting the criteria; and
   c. Be published no less than twice yearly.
(5) If an obligor owes an arrearage equal to or greater than one
(1) year's obligation, the cabinet shall take action against a license
in accordance with KRS 237.110(4).
   a. Send in advance, a [CS-122,[Advance Notice of Intent to Collect
Past-Due Support]*] notifying the obligor that his name is being
submitted for passport denial, revocation, or limitation, as estab-
lished in KRS 205.712(8); and
   b. Forward the certified name and supporting documents to the
Secretary of the U.S. Department of Health and Human Serv-
ces for passport denial, revocation, or limitation; and
   c. Notify the Secretary of the U.S. Department of Health and
Human Services that the cabinet rescinds its request for passport
denial, revocation, or limitation if:
      1. The obligor's time appeal is resolved with a finding that the
arrearage is less than $2,500 ($6,000); or
      2. The obligor is in compliance with payments ordered in an
existing arrearage judgment;
      3. A payment reduces the arrearage to less than $2,500
($6,000); or
      4. The obligor takes action as specified in Section 2(4)(g)3 of
this administrative regulation.
(7) If an obligor owes an arrearage equal to or greater than
$10,000, the cabinet shall:
   a. Use the following criteria to designate an obligor for a de-
linquent listing:
      1. The obligor's nonpayment within the last six (6) months;
      2. The obligor's known address;
      3. The cabinet is the payee for support; and
      4. Audited arrearages by the cabinet within the last year;
   (b) Provide to the Office of the Attorney General a delinquent
listing no less than twice yearly for publication on the Internet, as
established in KRS 205.712(16);
   (c) Send to an obligor meeting the criteria in paragraph (a) of
this subsection the "CS-175, Notice to Place Noncustodial Parent's
Name or Delinquent Listing";
   (d) Not include the obligor in the delinquent listing if the obligor
takes action as specified in Section 2(4)(g)3 of this administrative
regulation;
   (e) Accept an obligor's request for an administrative hearing as
specified in Section 4 of this administrative regulation;
(f) Refer the case to a parent-locatior service if the notice is returned and the forwarding address unknown;
(g) Include the obligor in the delinquent listing provided to the Office of the Attorney General if there is:
1. No dispute;
2. A hearing that results in a finding that the case qualifies for the delinquent listing; or
3. No action taken by the obligor as specified in Section 2(4)(g)3 of this administrative regulation; and
(h) Advise the Office of the Attorney General to remove an obligor from the listing, if the obligor takes action as specified in Section 2(4)(g)3 of this administrative regulation.
(8) If a person fails to comply with a subpoena or warrant relating to a paternity or child support proceeding, the cabinet shall:
(a) Pursue action in accordance with the provisions of subsection (2) of this section; and
(b) Notify the person that a license or certificate may be retained by complying with the subpoena or warrant.

Section 4. Appeal Procedures. (1) An administrative hearing shall be conducted in accordance with KRS Chapter 13B.
(2) An obligor may request and be granted an administrative hearing in accordance with KRS 405.450 based upon a mistake in fact, as defined in KRS 205.712(13), pertaining to an incorrect:
(a) Person identified as an obligor;
(b) Current or past due support obligation.
(3) A request shall be made to the cabinet:
(a) In writing;
(b) In person; or
(c) Orally, later reduced to writing within the time frames as specified in subsection (4) of this section.
(4) The written request for an administrative hearing shall be considered timely if made within the timeframes established in an initial notice as follows:
(a) Ten (10) days for:
   1. Income withholding; or
   2. Intent to boot a vehicle;
(b) Fifteen (15) days for unemployment insurance withholding;
(c) Twenty (20) days for:
   1. Order to withhold;
   2. Lien;
   3. Intent to request denial or suspension of a license or certificate; or
   4. Intent to place the obligor's name on a delinquent listing; or
(d) Thirty (30) days for intent to collect past due support.
(5)(a) Prior to a hearing, the cabinet or designee shall schedule and hold an informal dispute conference with an obligor within ten (10) days of receiving the hearing request to attempt to resolve a dispute.
(b) [66] If the [informal dispute conference does not resolve the hearable issue, the cabinet or designee shall schedule an administrative hearing.

Section 5. Incorporation by Reference. (1) The following material is incorporated by reference:
(a) "CS-44 Notice of Intent to Request Denial or Suspension", edition 9/06 [406];
(b) "CS-53 Notice to Licensing/Certification Board or Agency", edition 9/06 [406];
(c) "CS-68 Order to Withhold", edition 9/06 [406];
(d) "CS-68 Answer to Withhold", edition 9/06 [406];
(e) "CS-70 Release of Order to Withhold", edition 9/06 [406];
(f) "CS-72 National Medical Support Notice", edition 9/06 [406];
(g) "CS-73 Unemployment Insurance Letter", edition 9/06 [406];
(h) "CS-76 Unemployment Insurance Notice of Withholding", edition 9/06 [406];
(i) "CS-78 Payment Agreement", edition 9/06 [406];
(j) "CS-93 Order to Deliver", edition 9/06 [406];
(k) "CS-85 Notice of Lien", edition 9/06 [406];
(l) "CS-89 Order/Notice to Withhold Income for Child Support", edition 9/06 [406];
(m) "CS-92 Intrastate Notice of Lien", edition 9/06 [406];
(n) "CS-119 Noncustodial Parent's Notice of Lien", edition 9/06 [406];
(o) "CS-120 Release of Lien", edition 9/06 [406];
(p) "CS-121 Noncustodial Parent's Answer to Withhold", edition 9/06 [406];
(q) "CS-121.1, Noncustodial Parent's Answer to Withhold-Limited Enforcement of Interstate Cases", edition 9/06 [406];
(r) "CS-122 Advance Notice of Intent to Collect Past-Due Support", edition 9/06 [406];
(s) "CS-164 Notice of Income Withholding", edition 9/06 [406]; and
(t) "CS-175 Notice of Intent to Place Noncustodial Parent's Name on Delinquent Listing", edition 9/06 [406].
(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Cabinet for Health and Family Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

TOM EMBERTON, Commissioner
MIKE BURNSIDE, Undersecretary
MARK D. BIRDWHISTELL, Secretary
APPROVED BY AGENCY: June 12, 2006
FILED WITH LRC: June 13, 2006 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 21, 2006, at 9 a.m. in the Cabinet for Health and Family Services Building, 275 East Main Street, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by July 14, 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 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 July 31, 2006. Send written notification of intent to be heard at the public hearing or written comments to:
CONTACT PERSON: Jill Brown, Office of Legal Services, 275 East Main Street SW-B, Frankfort, Kentucky 40621, phone (502) 564-7905, fax (502) 564-7573.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: David Gayle
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation establishes the procedures for collection of child support payments, including means of enforcement and management of disputes and appeals.
(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the procedures for collection of assigned support obligations.
(c) How this administrative regulation conforms to the content of the authorizing statutes: The cabinet has responsibility under KRS 205.712, 194A.050(1), and by virtue of applying for federal funds under 42 U.S.C. 654, 659, and 666, to manage, collect, and enforce assigned support obligations. This administrative regulation conforms to the authorizing statutes by establishing procedures for collection of assigned support obligations.
(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 establishing procedures used by the cabinet to collect assigned support orders.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: This amendment adds provisions to the administrative regulation to establish procedures for collecting lump sum payments made by employers to obligors with arrearages in accordance with KRS 405.485(6). In addition, the amendment lowers the
arrears threshold used to determine whether or not the cabinet will pursue passport denial for an obligor in accordance with Pub.L. 109-171. The amendment also updates federal forms incorporated by reference and makes technical corrections to state-issued forms and the administrative regulation to comply with requirements of KRS Chapter 13A.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary in order to implement HB 155 2005 GA and maintain eligibility for federal funding under Title IV-D of the Social Security Act. The amendment is also necessary to implement Pub.L. 109-171, which requires states to lower the arrearage amounts used in determining possible passport denials for obligors owing arrearages. In addition, the amendment is necessary to make technical corrections and clarify procedures used in the collection of assigned support obligations.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes by clarifying procedures for the collection of an assigned support obligation, updating federally issued forms, and adding procedures to implement HB 155 2005 GA and Pub.L. 109-171 pertaining to passport denials.

(d) How the amendment will assist in the effective administration of the statutes: This amendment establishes the requirements necessary to be followed for collecting past-due assigned support orders from an employer's lump sum payment and pursuing passport denials for obligors with arrearages. The amendment updates federal forms incorporated by reference into this regulation and makes necessary technical corrections to ensure clarity and compliance with KRS Chapter 13A requirements.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The cabinet serves approximately 250,000 child support cases which will be subject to provisions contained within this administrative regulation. These cases involve obligors, child custodians, obligors' employers, and the state Department of Revenue.

(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 procedures utilized in the collection of an assigned support obligation, including income withholdings and tax offsets. The cabinet has estimated that approximately 11,000 employers, including state government, will be subject to the regulatory provisions pertaining to lump sum payments in accordance with KRS 405.465(6). To date, approximately 357 employers have reported a lump sum payment. The cabinet has referred approximately 50,000 obligors to the Department of State for passport denials due to the obligors' being in arrears $5,000 or more. The cabinet projects that an additional 4,000 cases will be referred to the Department of State as a result of the reduction of the arrearage threshold from $5,000 to $2,500 or more.

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

(a) Initially: No additional funding required.

(b) On a continuing basis: No additional funding required.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The sources of funding include state General Funds and federal funds under Title IV-D of the Social Security Act.

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

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

(9) TIERING: Is tiering applied? No, tiering has not been applied, as this administrative regulation will be applied in a like manner on a statewide basis.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate...

date. 45 C.F.R. 302.60, 320.65, 303.6, 303.32, 303.72, 303.100-303.102, 303.104; 15 U.S.C. 1672; 42 U.S.C. 652, 654, 659, 666(a)(1)-(4), (6)-(12), (14)-(17), (19), (b); Pub.L 109-171
2. State compliance standards. KRS 194.050(1), 205.712
3. Minimum or uniform standards contained in the federal mandate. The provisions of the administrative regulation comply with the federal mandate.
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 standards, or additional or different responsibilities or requirements. None imposed.
CABINET FOR HEALTH AND FAMILY SERVICES
Department for Community Based Services
Division of Policy Development
(Amendment)

U.S.C. 5122, 5179

STATUTORY AUTHORITY: KRS 194A.050(1), 7 C.F.R. 271.4, 273.10 [274.42]

NECESSITY, FUNCTION, AND CONFORMITY: 7 C.F.R. 271.14 requires the Cabinet for Health and Family Services to administer a Food Stamp Program within the state. KRS 194A.050(1) requires the secretary to promulgate administrative regulations necessary to implement programs mandated by federal law or to qualify for the receipt of federal funds and necessary to cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. This administrative regulation establishes the certification process used by the cabinet in the administration of the Food Stamp Program.

Section 1. Eligibility and Benefit Levels. (1) Eligibility and benefit levels shall be determined by the cabinet by considering a household's circumstance for the entire period for which each household is certified.

(2) Certification criteria shall be applicable to all households.

(3) Certain households require special or additional certification procedures as specified in Section 5 of this administrative regulation.

Section 2. Certification Periods. (1) In accordance with 7 C.F.R. 273.100, the cabinet shall establish a definite period of time within which a household shall be eligible to receive benefits. (2) Except as provided in subsections (3) and (4) of this section, a household shall be certified for at least six (6) months.

(3) A household shall be certified for one (1) or two (2) months if the household meets criteria to: 1. Expedite benefits in accordance with 7 C.F.R. 273.2(l)(1); and 2. Postpone verification.

(b) At the end of a one (1) or two (2) month certification, a household may be recertified for a six (6) month or twenty-four (24) month certification as specified in subsections (2) and (4) of this section.

(4) A household shall be certified for twenty-four (24) months if all members:

(a) Are either elderly or have a disability, as defined in KAR 3:010; and
(b) Have no earned income.

Section 3. Certification Notices to Households. In accordance with 7 C.F.R. 273.10(d), the cabinet shall provide an applicant with one (1) of the following written notices as soon as a determination is made, but no later than thirty (30) days after the date of the initial application:

(1) Notice of eligibility;
(2) Notice of denial; or
(3) Notice of pending status.

Section 4. Application for Recertification. The cabinet shall process an application for recertification as specified in KAR 3.030, Section 1, as follows:

(1) If a household files the application:

(a) By the 15th day of the last month of the certification, the cabinet shall:
1. Allow the household to return verification or complete a required action through the last calendar day of the application month;
2. Provide uninterrupted benefits, if the household is otherwise eligible; or
(b) If a household files the application After the 15th day but prior to the last day of the last month of the certification, the cabinet shall:
1. Allow the household thirty (30) days to return verification or complete a required action; and
2. If the household fails to provide information required for the cabinet to process the application for recertification within a time period established in subsection (1) of this section the cabinet shall take action in accordance with 7 C.F.R. 273.14(e)(2).

Section 5. Certification Process for Specific Households. Pursuant to 7 C.F.R. 273.11, certain households have circumstances that are substantially different from other households and therefore require special or additional certification procedures.

(1) A household with a self-employed member shall have its case processed as follows:

(a) Income is annualized over a twelve (12) month period, if self-employment income;
1. Represents a household's annual income; or
2. Is received on a monthly basis which represents a household's annual support.
(b) Self-employment income, which is intended to meet the household's needs for only part of the year, shall be averaged over the period of time the income is intended to cover.
(c) Income from a household's self-employment enterprise that has been in existence for less than one (1) year shall be averaged over the period of time the business has been in operation and a monthly amount projected over the coming year.
(d) The cabinet shall calculate the self-employment income on anticipated earnings if the: 1. Averaged annualized amount does not accurately reflect the household's actual circumstances; and
2. Household has experienced a substantial increase or decrease in business.

(2) A household with a boarder shall have its case processed as follows:

(a) Income from the boarder shall:
1. Be treated as self-employment income; and
2. Include all direct payments to the household for:
   a. Room;
   b. Meals; and
   c. Shelter expenses.
(b) Deductible expenses include:
1. Cost of doing business;
2. Twenty (20) percent of the earned income; and
3. Shelter costs.
(c) A household with a member ineligible due to an intentional program violation, or failure to comply with the work requirements, or work registration requirements, shall be processed as follows:
   a. Income and resources of the ineligible member shall be counted in their entirety as income available to the remaining household members.
   b. Remaining household members shall receive standard earned income, medical, dependent care, and excess shelter deductions.
   c. The ineligible member shall not be included when:
      1. Assigning benefit levels;
      2. Comparing monthly income with income eligibility standards; and
   3. Comparing household resources with resource eligibility standards.
   d. A household with a member ineligible due to failure to provide a Social Security number, or ineligible alien status, shall be processed as follows:
      a. All resources of an ineligible member shall be considered available to the remaining household members.
      b. A pro rata share, as described in 7 C.F.R. 273.11(c)(2)(i), of the ineligible member's income shall be attributed to remaining household members.
      c. The twenty (20) percent earned income deduction shall be applied to the pro rata share of earnings.
      d. The ineligible member's share of dependent care and shelter expenses shall not be counted.
      e. The ineligible member shall not be included as specified in subsection (3)(c) of this section.
   f. A household with a nonhousehold member shall be proc-
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issued as follows:
(a) With the exception of an ineligible member, the income and resources of a nonhousehold member shall not be considered available to the household with whom they reside.
(b) If the earned income of a household member and a nonhousehold member are combined into one (1) wage, the agency shall:
1. Count that portion due to the household as earned income, if identifiable; or
2. Count a pro rata share of earned income, if the nonhousehold member's share cannot be identified.
(c) A nonhousehold member shall not be included in the household size, when determining the eligibility and benefits for the household.
(d) The cabinet shall process the case [a resident] of a drug or alcoholic treatment [rehabilitation] program resident [in a private, nonprofit organization or a publicly operated community mental health center], as described in 7 C.F.R. 271.2, [shall have his case processed as follows):
   (a) An eligible household shall include:
      1. A narcotic addict; or
      2. An alcoholic; and
      2. A child of the narcotic addict or alcoholic.
   (b) Certification shall be accomplished through use of the facility's authorized representative.
   (c) Food stamp processing standards and notice provisions shall apply to a resident recipient.
   (d) A treatment center shall notify the cabinet of a change in a resident's circumstance.
   (e) Upon departure of the center, the resident shall be eligible to receive remaining benefits, if otherwise eligible.
   (f) The organization or institution shall be responsible for knowingly misrepresenting a household circumstance.
   (g) The following case processing procedures apply to residents [a resident] of a group living arrangement, as defined in 7 C.F.R. 271.2 [who is blind-or-disabled, as specified in 921 KAR 3:040, and receives retiree's, survivor's, and disabled individuals', or SSI benefits shall have his case processed as follows):
      (a) A resident shall apply on his own behalf or through use of the facility's authorized representative.
      (b) Certification provisions applicable to all other households shall be applied.
      (c) Responsibility for reporting changes depends upon who files the application:
         1. If a resident applies on his own behalf, the household shall report a change in household circumstance to the cabinet; or
         2. If the group living arrangement acts as authorized representative, the group living arrangement shall report a change in household circumstance.
      (d) Eligibility of the resident shall continue after departure from the group living arrangement, if otherwise eligible.
      (e) Unless the household applied on its own behalf, the group living arrangement shall be responsible for knowingly misrepresenting a household circumstance.
      (f) A case of a resident in a shelter for battered women and children shall be processed as follows:
         (a) The shelter shall:
            1. Have Food and Nutrition Service (FNS) authorization to redeem food benefits at wholesalers; or
            2. Meet the federal definition of a shelter as defined in 7 C.F.R. 271.2;
         (b) A shelter resident shall be certified for benefits as established in 7 C.F.R. 273.11(g); and
         (c) The cabinet shall promptly remove the resident from the former household's case, upon notification.
      (g) The case of an SSI recipient shall be [have his case] processed as follows:
         (a) An application may be filed at the:
            1. [The] Social Security Administration (SSA) Office, or
            2. [The] Local Department for Community Based Services [food stamp] office.
         (b) The cabinet shall not require an additional interview for applications filed at the SSA.
         (c) The cabinet shall obtain all necessary verification prior to approving benefits.
      (h) Certification periods shall conform to Section 2 of this administrative regulation.
      (i) A household change in circumstance shall conform to Section 6 of this administrative regulation.
      (j) A household with a member who is on strike shall have its eligibility determined by:
         (a) Comparing the striking member's income the day prior to the strike, to the striker's current income;
         (b) Adding the higher of the prestrike income or current income to other current household income; and
         (c) Allowing the appropriate earnings deduction.
      (k) Sponsored aliens.
      (l) Income of a sponsored alien, as defined in 7 C.F.R. 273.4(c)(2), shall be:
         1. Deemed income from a sponsor and sponsor's spouse which shall:
            a. Include total monthly earned and unearned income; and
            b. Be reduced by:
               (1) The twenty (20 percent earned income disregard, if appropriate; and
               (2) The Food Stamp Program's gross income eligibility limit for a household equal to the sponsor's household;
            2. Subject to appropriate income exclusions as specified in 921 KAR 3:020, Section 3; and
            3. Reduced by the twenty (20 percent earned income disregard, if appropriate.
         (m) If the sponsor is financially responsible for more than one (1) sponsored alien, the sponsor's income is pro-rated among each sponsored alien.
         (n) A portion of income, as specified in paragraph (a) of this subsection, of the sponsor and of the sponsor's spouse shall be deemed unearned income until the sponsored alien:
            1. Becomes a naturalized citizen;
            2. Is credited with forty (40) qualifying quarters of work;
            3. Meets criteria to be exempt from deeming, in accordance with 7 C.F.R. 273.4(c)(3); and
            4. Is no longer considered lawfully admitted for permanent residence and leaves the United States; or
            5. Dies, or the sponsor dies.
         (o) Effective October 1, 2003, deeming requirements no longer apply to sponsored alien children under eighteen (18) years of age, in accordance with 7 U.S.C. 2014.

Section 6. Disaster Certification. The cabinet shall distribute emergency food stamp benefits, pursuant to 42 U.S.C. 5122, to a household residing in a county determined to be a disaster area in accordance with 42 U.S.C. 5172 and 7 C.F.R. 280.1

Section 7. Reporting Changes.
(a) If a household does not meet criteria specified in Section 2(4) of this administrative regulation, the [a certified] household shall be required to report, a change in household circumstance, within ten (10) days of the end of the month in which the change occurs. a change which causes:
(a) The household's gross monthly income to exceed 130% of poverty level based on household size, or
(b) A household member, who does not have an exemption from work requirements, as specified in 921 KAR 3:025(B)(6), to work less than twenty (20) hours per week.
(b) If a certified household meets criteria in Section 2(4) of this administrative regulation, the household shall report a change in circumstance within ten (10) days of the date the change becomes known to the household.
(c) An applying household shall report a change related to its food stamp eligibility and benefits:
   (a) At the certification interview; or
   (b) Within ten (10) days of the date of the notice of eligibility, if the change occurs after the interview but prior to receipt of the notice.

TOM EMBERTON, Commissioner  
MIKE BURNSIDE, Undersecretary  
MARK D. BIRDWHISTELL, Secretary
VOLUME 33, NUMBER 1 – JULY 1, 2006

APPROVED BY AGENCY: June 12, 2006
FILED WITH LRC: June 13, 2006 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 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 July 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 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 July 31, 2006. Send written notification of intent to be heard at the public hearing or written comments to:

CONTACT PERSON: Jill Brown, Office of Legal Services, 275 East Main Street SW-B, Frankfort, Kentucky 40621, phone (502) 564-7905, fax (502) 564-7573.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: David Gayle

(1) Provide a brief summary of:

(a) What the administrative regulation does:

(b) The necessity of this administrative regulation:

(c) How this administrative regulation conforms to the content of the authorizing statutes:

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes:

(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:

(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:

(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 provide a process for certifying households for emergency food stamp benefits if they reside in a disaster area and are otherwise eligible. The amendment will also clarify the certification timeframe for applicants for food stamp benefits.

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

(a) Initially: No additional funding required.

(b) On a continuing basis: No additional funding required.

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

The source of funding will be State General Funds and Food Stamp Federal Funds. The funding has been appropriated in the enacted budget.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment:

There are no fees and no increase in funding for this administrative regulation.

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

This administrative regulation does not establish any fees or directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? No. Tiering was not applied, as this administrative regulation will be applied in a like manner on a statewide basis.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate.

7 C.F.R. 271.4

2. State compliance standards. None

3. Minimum or uniform standards contained in the federal mandate. The provisions of the administrative regulation comply with the federal mandate.

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 standards, or additional or different responsibilities or requirements. None imposed.
KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY
Division of Student and Administrative Services
(New Administrative Regulation)

11 KAR 4:080. Student aid applications.


NECESSITY, FUNCTION, AND CONFORMITY: KRS 164.518(3) authorizes the authority to promulgate administrative regulations for administration of the Early Childhood Development Scholarship Program. KRS 164.744(2) authorizes the authority to provide scholarships, and KRS 164.753(3) authorizes the authority to promulgate administrative regulations pertaining to standards for scholarship programs. KRS 164.748(4) requires the authority to promulgate administrative regulations governing work-study payments. KRS 164.769 establishes a teacher scholarship program and authorizes the authority to establish the terms and conditions for the award, cancellation, and repayment of teacher scholarships, awarded under KRS 164.769 and under prior teacher scholarship programs administered by the authority. KRS 164.748(4) authorizes the authority to promulgate administrative regulations pertaining to the awarding of grants, scholarships, and honorory scholarships as provided in KRS 164.740 to 164.7891. 20 U.S.C. 1070d-31 et seq., establishes the Robert C. Byrd Honors Scholarship Program and authorizes the secretary to make grants to states to provide scholarships to outstanding high school graduates who show promise of continued excellence. 20 U.S.C. 1070d-35 and 1070d-37, and 34 C.F.R. 654.30 and 654.41 require the authority, as the state agency designated to receive the grant, to establish criteria and application procedures for the selection of eligible scholars. This administrative regulation designates and incorporates the applications to be utilized under these grant, scholarship, and work-study programs.

Section 1. Applications. In order to participate in the specified grant, scholarship, and work-study programs administered by the Kentucky Higher Education Assistance Authority (authority), the following application forms shall be completed in accordance with their instructions:

(1) KHEAA Grant Program as set forth in 11 KAR 5:130: 2006-2007 Free Application for Federal Student Aid (FAFSA) and
(2) KHEAA Work-Study Program as set forth in 11 KAR 6.010: KHEAA Work-Study Program Student Application.
(3) Teacher Scholarship Program as set forth in 11 KAR 8:030: Teacher Scholarship Application, May 2006 edition;
(4) Early Childhood Development Scholarship Program as set forth in 11 KAR 16.010:
(a) The 2006-2007 Free Application for Federal Student Aid (FAFSA); and
(5) Robert C. Byrd Honors Scholarship Program as set forth in 11 KAR 18.010:
(a) For high school students, the Robert C. Byrd Honors Scholarship Application;
(b) For GED recipients, the Robert C. Byrd Honors Scholarship Program Application for GED Recipients.

Section 2. Incorporated by Reference. (1) The following material is incorporated by reference:
(a) The "2006-2007 Free Application for Federal Student Aid";
(b) The "KHEAA Work-Study Program Student Application";
(c) The "Teacher Scholarship Application, May 2006 Edition";
(d) The "Early Childhood Development Scholarship Application";
(e) The "Robert C. Byrd Honors Scholarship Program Application";

(2) The "Robert C. Byrd Honors Scholarship Program Application for GED Recipients".

JIM JACKSON, Chair
APPROVED BY AGENCY: May 25, 2006
FILED WITH LRC: June 15, 2006 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Friday, July 21, 2006 at 10 a.m. at 100 Airport Road, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing 5 workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until Monday, July 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: Mr. Richard F. Casey, General Counsel, Kentucky Higher Education Assistance Authority, P.O. Box 798, Frankfort, Kentucky 40602-0798, phone (502) 696-7290, fax (502) 696-7293.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Linda Renschler

(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation designates and incorporates the applications to be utilized under these grant, scholarship, and work-study programs administered by the authority.
(b) The necessity of this administrative regulation: KHEAA is required to promulgate administrative regulations pertaining to the administration of the Early Childhood Development Scholarship Program, KHEAA Work-Study Program, Teachers Scholarship Program, College Access Program (CAP), and Kentucky Tuition Grant (KTG) Program, as well as the Robert C. Byrd Honors Scholarship Program, pursuant to KRS 164.518(3), 164.746(4), 164.753(3), (6), 164.7535, 164.769(5), (6)(f), 34 C.F.R. 654.30, 654.41, and 20 U.S.C. 1070d-35, 1070d-37, 1070d-38.
(c) How this administrative regulation conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes by prescribing the applications to be utilized under the grant, scholarship, and work-study programs administered by the authority.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation prescribes and incorporates the various application forms to be used by students to apply for the financial aid programs administered by the 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 is not an amendment to an existing administrative regulation.
(b) The necessity of the amendment to this administrative regulation: Same as (2)(a).
(c) How the amendment conforms to the content of the authorizing statutes: Same as (2)(a).
(d) How the amendment will assist in the effective administration of the statutes: Same as (2)(a).
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The proposed new regulation would not affect any individuals, as it merely changes the location wherein the grant, scholarship, and work-study applications are located in the 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. The proposed new regulation merely centralizes the regulatory location of the student aid applications for programs administered by the authority.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:
   (a) Initially: There is no cost to implement this administrative regulation.
   (b) On a continuing basis: Same as (a).

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No funding source is required in order to implement this administrative regulation, since it merely incorporates in a central location the applications to be used for participation in student aid programs. The individual programs are each funded separately.

(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 administrative regulation does not establish any fees, nor does this administrative regulation directly or indirectly increase any 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 any fees, nor does it directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Tiering was not applied. It is not applicable to this amendment. This administrative regulation is intended to provide equal opportunity to participate, and consequently does not inherently result in disproportionate impacts on certain classes of regulated entities. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution. The regulation provides equal treatment and opportunity for all applicants and recipients.

CABINET FOR HEALTH AND FAMILY SERVICES
Office of Inspector General (New Administrative Regulation)


RELATES TO: KRS 194A.050, 216B.040, 42 C.F.R. 483.75(q), 483.160, 488.301

STATUTORY AUTHORITY: KRS 216B.042(1), 216B.075, 42 C.F.R. 483.35(h)

NECESSITY, FUNCTION AND CONFORMITY: KRS 216B.042(1) requires the Cabinet for Health and Family Services to establish licensure standards to ensure safe, adequate, and efficient health care facilities. 42 C.F.R. 483.35(h) authorizes the state agency to develop an approved training and practical skills program that establishes standards for paid feeding assistants and mandates supervision by a registered nurse or licensed practical nurse. A property-trained paid feeding assistant is a single task worker whose assistance may improve the quality of care and quality of life for a resident who needs assistance during meals. This administrative regulation establishes certification requirements for the employment of paid feeding assistants in licensed nursing facilities and skilled nursing facilities to assist residents who only need encouragement or minimal assistance during mealtime.

Section 1. Definitions. (1) "Complicated feeding problem" means a condition that requires supervision and assistance by a licensed nurse or certified nurse aide and includes:
   (a) Difficulty with swallowing;
   (b) Recurrent lung aspiration;
   (c) Assistance through tube or parenteral/IV feedings; or

(2) Any other condition requiring the assistance of a licensed nurse or a certified nurse aide.

(3) "Licensed practical nurse" is defined by KRS 314.011(9).

(4) "Nursing facility" means a facility that is licensed under 902 KAR 20:390.

(5) "Paid feeding assistant" means a person who has completed the training and received a satisfactory score on the examination required by this administrative regulation and is employed or contracted by a nursing facility or skilled nursing facility to provide feeding assistance to a resident who does not have a complicated feeding problem.

(6) "Registered nurse" is defined by KRS 314.011(5).

(7) "Skilled nursing facility" means a facility that is licensed under 902 KAR 20:055.

Section 2. Use of a Paid Feeding Assistant. (1) A licensed nursing facility or skilled nursing facility may employ a paid feeding assistant on a full- or part-time basis to assist with feeding a resident who shall:
   (a) Not have a complicated feeding problem; and
   (b) Be approved to receive the assistance based on the charge nurse's assessment and the most recent resident assessment and plan of care.

(2) A paid feeding assistant shall:
   (a) Have successfully completed the training established in Section 3 of this administrative regulation;
   (b) Have received orientation from the facility employing the paid feeding assistant that covers the following facility-specific areas:
      1. Confidentiality of resident care and records;
      2. Monitoring resident nutrition intake and output;
      3. Emergency procedures;
      4. Specific needs of the resident who will be assisted;
      5. Use of the facility's emergency call system; and
      6. Laws pertaining to resident abuse, neglect, and exploitation of a resident's property.
   (c) Work under the supervision of a registered nurse or licensed practical nurse; and
   (d) Not be employed if employment is prohibited by KRS 216.532, 216.936, or 216.789.

(3) In a medical emergency involving a resident who is being assisted by a paid feeding assistant, the paid feeding assistant shall immediately utilize the resident call system to summon the assistance of a supervisory nurse.

(4) Before a facility employs a paid feeding assistant who received training from another individual or entity, the facility shall:
   (a) Contact the individual or entity that provided the training and document verification that the feeding assistant successfully completed the training required by Section 3 of this administrative regulation;
   (b) Require the feeding assistant to retake and successfully pass the written and skills competency test; and
   (c) Issue the feeding assistant a new certificate of training.

(5) The facility shall maintain a current list of residents who are approved to receive feeding assistance from a paid feeding assistant.

(6) A feeding assistant who is seeking employment and who has not been employed during the prior two (2) years as a paid feeding assistant shall be required to repeat and successfully complete the training and pass the examination before assisting a resident with feeding.

(7) A facility shall provide regular in-service training for paid feeding assistants concerning:
   (a) Amendments to the paid feeding assistant regulation; and
   (b) Changes in pertinent facility policies and procedures.

Section 3. Training Program. (1) A paid feeding assistant shall receive a minimum of eight (8) hours training in the current version of the curriculum published by the Cabinet for Health and Family Services, Office of Inspector General, entitled "Kentucky Paid Feeding Assistant Manual".

(2) Review of all curriculum material, a score of seventy-five (75) percent or greater on the written examination, and a score of 100% on the skills competency test established in the curriculum.
shall be required to successfully complete the paid feeding assistant training.

(3) The training shall include information on:
(a) Feeding techniques;
(b) Assistance with feeding and hydration;
(c) Communication and interpersonal skills;
(d) Appropriate responses to resident behavior;
(e) Safety and emergency procedures, including the Heimlich maneuver;
(f) Infection control;
(g) Resident rights; and
(h) Recognition of changes in the condition of a resident which are inconsistent with the resident’s normal behavior and the importance of reporting changes to a supervisory nurse.

(4) The training shall be conducted by:
(a) A registered nurse; or
(b) A licensed practical nurse working under the supervision of a registered nurse.

(5) Before conducting paid feeding assistant training, the nurse shall:
(a) Read the "Kentucky Paid Feeding Assistant Manual";
(b) Complete the instructor assessment in Section 15 of the "Kentucky Paid Feeding Assistant Manual"; and
(c) Complete the instructor attestation form in Section 15 of the "Kentucky Paid Feeding Assistant Manual".

(6) A person who has successfully completed training and passed the examination shall be issued a certificate of training as established in Section 15 of the "Kentucky Paid Feeding Assistant Manual".

(7) A facility shall maintain a record of training and certification for all persons employed by the facility as paid feeding assistants.

(a) The documentation shall include:
1. Name and social security number of the person trained;
2. Name of the person who conducted the training;
3. Test scores of the written and skills competency tests;
4. Date of training;
5. Duration of training;
6. Location of training; and
7. Documentation of the successful completion of the training course for paid feeding assistants.

(b) A current and accurate copy of the record shall be submitted to the Office of Inspector General within five (5) working days from the end date of each quarter (December, March, June, September), in care of the Division of Health Care Facilities and Services, 275 East Main Street, 5E-A, Frankfort, Kentucky 40621.


(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of Inspector General, 275 East Main Street, 5E-A, Frankfort, Kentucky 40621, Monday through Friday, 8:00 a.m. to 4:30 p.m.

ROBERT J. BENVENUTI, III, Esq., Inspector General
MARK D. BIRDWHISTELL, Secretary
APPROVED BY AGENCY: June 8, 2006

FILED WITH LBC: June 12, 2006 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on July 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 July 14, 2006, 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 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 July 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 5 W-B, Frankfort, Kentucky 40601, phone (502) 564-7905, fax (502) 564-7573.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Steven D. Davis, Esq.
(1) Provide a brief summary of:
(a) What the administrative regulation does: This administrative regulation establishes the requirements for testing and approving paid feeding assistants to provide services in nursing and skilled nursing facilities.
(b) The necessity of this administrative regulation. Federal law authorizes the state agency to establish a paid feeding assistant certification program.
(c) How this administrative regulation conforms to the content of the authorizing statutes. This regulation is consistent with 42 C.F.R. 488.35(h), which authorizes the establishment of the paid feeding assistant program.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation provides the necessary training curriculum and examination material necessary to certify an individual to serve as a paid feeding assistant.
(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. 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 creates a new class of employee who may assist with feeding residents in nursing and skilled nursing facilities. All persons who are certified under this regulation to provide nonmedical assistance with feeding will be governed by this regulation.
(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of the administrative regulation, if new, or by the change if it is an amendment: This regulation authorizes the new class of employee and establishes criteria for certification.
(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: There will be no additional costs associated with implementation as the program materials have already been developed.
(b) On a continuing basis: No continuing costs.
(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: 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: This administrative regulation will not increase any fees or require any additional funding to implement.
(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation will not directly or indirectly increase any fees.
(9) TIERING. Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all persons who seek certification as paid feeding assistants.
CABINET FOR HEALTH AND FAMILY SERVICES  
Department for Mental Health and Mental Retardation Services  
Division of Administration and Financial Management  
(New Administrative Regulation)

908 KAR 3:190. Drug testing policies at a state-operated facility for persons with mental illness or mental retardation.

RELATES TO: KRS 216A.050, 216A.070, 41 U.S.C. 701 - 707  
STATUTORY AUTHORITY KRS 194A.050, 210.010, 210.040  
210.055, 210.265  
NECESSITY, FUNCTION, AND CONFORMITY: KRS 210.010 authorizes the secretary of the Cabinet for Health and Family Services to prescribe administrative regulations for the administration of the cabinet and of the institutions under the control of the cabinet. KRS 194A.050 also empowers the secretary to promulgate administrative regulations to carry out cabinet programs. This administrative regulation establishes the procedures for the drug testing of employees and contractors of state-operated institutions for persons with mental illness or mental retardation.

Section 1. Definitions. (1) "Administrator on duty" means a faculty employee charged with decision-making authority for the facility during the employee's given work shift.

(2) "Applicant" means an individual seeking employment in a test-designated position at a facility operated by the department.

(3) "Appointing authority" means the Secretary of the Cabinet for Health and Family Services or his designee.

(4) "Controlled substance" is defined in KRS 218A.010(5).

(5) "Confirmatory test" means a second analytical procedure to identify the presence of a specific drug or metabolite which is independent of the initial test and which uses a different technique and chemical principle from that of the initial test in order to ensure reliability and accuracy.

(6) "Department" means the Department for Mental Health and Mental Retardation Services.

(7) "Donor" means the individual from whom a urine specimen is collected.

(8) "Dilute specimen" means a drug test urine specimen in which the creatinine concentration is less than 20 mg/dL and the specific gravity is less than 1.003.

(9) "Drug" is defined in KRS 218A.010(11).

(10) "Employee" means a person employed at or by a facility for the care and treatment of individuals with mental illness or mental retardation operated by the department.

(11) "Initial test" means an immunoassay test to eliminate negative urine specimens from further consideration and to identify the presumptively positive specimens that require confirmation or further testing.

(12) "Failed drug test" means a circumstance in which a test-designated employee, who is directed to submit to a drug test, engages in any of the following actions:

(a) Fails to submit to or complete a drug test;
(b) Interferes with a drug test procedure;
(c) Tamper with a drug test specimen; or
(d) Has a second drug test conducted pursuant to Section 13(1) reported as a dilute specimen.

(13) "Negative drug test" means the results of a drug test administered with a test-designated employee in which the drug test specimens test below the cutoff levels as specified in the "Mandatory Guidelines for Federal Workplace Drug Testing Programs".

(14) "On duty" means being engaged in the performance of work responsibilities for the employee.

(15) "Positive drug test" means the results of a drug test administered with a test-designated employee in which the drug test specimens test above the cutoff levels as specified in the "Mandatory Guidelines for Federal Workplace Drug Testing Programs".

(16) "Random selection" means a statistically valid computer generated procedure utilized to determine test-designated employees selected to submit to random drug testing.

(17) "Reasonable suspicion" means the quantity of proof or evidence, based on specific, objective facts and rationally derived inferences from those facts about the conduct of an individual that would lead a reasonable person, based upon his training and experience, to suspect that the individual has been misusing or abusing a controlled substance or a prescription or non-prescription medication in violation of this administrative regulation.

(18) "Return to duty" means the circumstances and conditions under which a test-designated employee shall be allowed to resume their regular work duties when the employee has had a positive drug test result reported, has met the criteria specified in Section 3(5) of this administrative regulation.

(19) "Sample" means a representative portion of a urine specimen or quality control sample used for testing.

(20) "Specimen" means the portion of urine that is collected from a donor during a drug test.

(21) "Test-designated employee" means an individual employed at or by a facility for the care and treatment of individuals with mental illness or mental retardation operated by the department and who meets any of the following conditions:

(a) Provides direct health care or treatment services to a resident of the facility;
(b) Has regular unsupervised access to residents of the facility;

(c) Has unsupervised access to controlled substances.

(22) "Voluntary disclosure" means the willful and uncoerced admission by a test-designated employee concerning his misuse or abuse of a controlled substance or prescription or nonprescription medication that the employee has entered into substance abuse treatment.

Section 2. Applicability. (1) The department shall develop and implement a test-designated facility employee drug testing program in accordance with the provisions of this administrative regulation and the "Mandatory Guidelines for Federal Workplace Drug Testing Programs".

(2) This administrative regulation applies to test-designated applicants and test-designated employees at a facility for the care and treatment of individuals with mental illness or mental retardation operated by the department.

Section 3. Facility Drug Testing Program. (1) Each department-operated facility shall establish and operate a test-designated employee drug testing program. This program shall be implemented in accordance with this administrative regulation.

(2) As part of this program, each facility shall designate a drug testing coordinating officer (hereafter "the officer" and shall include any designee).

(3) Each officer shall:

(a) Serve as the primary point of contact for facility test-designated employee drug testing purposes between their respective facility and the department and between their respective facility and the drug testing vendor;

(b) Coordinate all facility test-designated employee drug testing activities for their respective facility;

(c) Prepare and periodically update a master roster of all test-designated employees at their respective facility. This roster shall include both state employees and contract employees;

(d) Submit the initial and updated master rosters periodically to the designated contact person with the contracted vendor of drug testing services;

(e) Serve as the employee designated at each facility to receive drug testing results from the drug testing vendor;

(f) Ensure that an appropriate on-site drug testing area is prepared and maintained at the facility; and

(g) Maintain all records pertaining to the facility's drug testing program in a secure and confidential manner. Unauthorized disclosure of information contained in these records shall be prohibited.

(4) The roster prepared pursuant to subsection (3)(c) of this section, shall include the following information concerning each employee:

(a) The employee's name;
(b) The employee's job title; and
(c) The employee's regularly scheduled work shift.

(5) The officer shall, within two (2) working days of receiving drug testing results, report these results in writing to their facility director. The officer shall also report in writing to the commissioner of the department (hereafter to include his designee) within two (2)
working days of receiving the drug testing results, the following information concerning a facility employee who had a positive drug test result reported, failed a drug test or voluntarily disclosed his misuse or abuse of a controlled substance or prescription or non-prescription medication:

(a) The employee's name;
(b) The employee's job title;
(c) The results of the employee's drug test;
(d) The type of drug test that occurred;
(e) The date the employee was placed on directed sick leave status; and

(1) Whether disciplinary action will be pursued.
(2) Except as provided as Section 5(3)(b) of this administrative regulation, all costs associated with implementing the facility test-designated employee drug testing program prior to July 1, 2006, shall be borne by the respective facility requesting the drug testing. Beginning July 1, 2006, all costs associated with conducting pre-employment drug testing of prospective test-designated state employees and random and reasonable suspicion drug testing shall be borne by the respective facility requesting the drug testing. Beginning July 1, 2006, all costs associated with conducting pre-employment drug testing of prospective test-designated contract employees shall be borne by the contract agency.
(3) Except as required by law or expressly authorized or required In this section, the appointing authority or anyone with knowledge shall not release employee information that is contained in the records maintained pursuant to this administrative regulation.
(4) An employee subject to testing shall be entitled, upon written request, to obtain copies of certain records pertaining to the employee's drug tests. The appointing authority shall promptly provide the records requested by the employee.
(5) The appointing authority may disclose information required to be maintained under this administrative regulation pertaining to an employee to that employee or to the decision-maker in a lawsuit, grievance, or other proceeding initiated by or on behalf of the individual and arising from the results of a drug test administered under the requirements of this administrative regulation, or from the appointing authority's determination that the employee engaged in prohibited conduct (including a worker's compensation, unemployment compensation, or other proceeding relating to a benefit sought by the employee).
(6) The appointing authority shall release information regarding an employee's records as directed by the specific, written consent of the employee authorizing release of the information to an identified person. Release of this information shall be in accordance with the terms of the employee's consent.

Section 4. Testing of Test-designated Facility Employees. (1) The appointing authority shall require a test-designated employee, as a condition of prospective or continued employment, to be subject to a drug test as provided in this administrative regulation.
(2) Tests authorized. The following categories of test-designated employee drug testing shall be authorized in accordance with Section 9 of this administrative regulation:
(a) Reasonable suspicion testing. A test-designated employee shall submit to a drug test if there is reasonable suspicion that the employee has violated this administrative regulation.
(b) Pre-employment testing. An applicant not occupying a test-designated position shall submit to and have a negative drug test result reported prior to being appointed to a test-designated position.
(c) Follow-up testing. The following conditions apply to test-designated employee follow-up testing:
1. An employee shall submit to an unscheduled follow-up drug test if the employee has engaged in any of the following within the previous twenty-four (24) months:
   a. Voluntarily disclosed his misuse or abuse of a controlled substance or prescription or non-prescription medication;
   b. Entered into or completed a rehabilitation program for drug abuse; or
   c. Been disciplined for violating this administrative regulation.
2. The appointing authority shall not require an employee who is subject to follow-up testing to submit to more than six (6) unscheduled follow-up drug tests within a twelve (12) month period.
(d) Random selection testing. A test-designated employee shall submit to a drug test if the employee is selected for testing on a random selection basis.
(3) Random selection testing.
(a) The commissioner of the department shall designate the number of random drug tests to be conducted in a given facility in any one (1) year.
(b) The number of random drug tests conducted in a given facility shall not exceed fifteen (15) percent of the number of all test-designated employees within the facility in any one (1) year.

Section 5. Positive Drug Test Results or Failed Drug Test. A test-designated employee who has a positive drug test result reported or who failed a drug test shall be immediately removed from his work duties and the employee shall be subject to disciplinary action, up to and including dismissal.
(2) A test-designated employee who has a positive drug test result or who failed a drug test shall be:
(a) Informed of the positive drug test result or the failed drug test;
(b) Informed that the facility director is placing the employee on directed sick leave status if a state employee;
(c) Instructed to leave the facility campus immediately. A state employee shall receive the notice of directed sick leave prior to being instructed to leave the facility campus;
(d) Informed that disciplinary action, up to and including dismissal, shall be initiated.
(3) If the resulting disciplinary action specified in subsection (2)(d) of this section is less than dismissal, the employee shall be allowed to return to duty if he provides:
(a) Written documentation, sent directly to the officer from a substance abuse treatment provider verifying that the employee has been evaluated, is compliant with the recommendations of the provider, and that the employee is safe to return to work. The officer shall offer to assist the employee in obtaining substance abuse treatment services;
(b) Written documentation that he has successfully passed, at his own expense, a drug test from a vendor approved by the officer. This return to duty documentation shall be sent directly from the vendor to the officer.
(4) An employee who was subject to the conditions of Section 4(2) of this administrative regulation and subsection (2)(d) of this section and who subsequently has a second positive drug test result or who fails a drug test shall be:
(a) Informed of the positive drug test result or the failed drug test;
(b) Informed that the facility director is placing them on directed sick leave status if a state employee;
(c) Instructed to leave the facility campus immediately. A state employee shall receive the notice of directed sick leave prior to being instructed to leave the facility campus;
(d) Informed that disciplinary action to seek dismissal is being initiated.
(5) Nothing in this administrative regulation shall alter the contract agreement between each facility and their contract vendors or the internal personnel policies of the contract vendor.

Section 6. Prohibited Behavior. An employee shall not engage in the following activities while on duty or on facility grounds:
(1) The unlawful manufacture, distribution, sale, dispensation, possession, or use of a controlled substance;
(2) Consuming or under the influence of a controlled substance illegally obtained;
(3) The use, misuse, or abuse of prescription or nonprescription medication in a quantity or manner sufficient to impair a test-designated employee's ability to perform assigned duties or in any way that places patient or fellow employee safety at risk; or
(4) Interfering with a testing procedure or tampering with a test sample.

Section 7. Voluntary Disclosure. (1) A test-designated state employee who voluntarily discloses the misuse or abuse of a controlled substance or prescription or nonprescription medication shall:

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(a) Not be disciplined for self disclosure reporting provided that the self disclosure occurred prior to either of the following: 1. A determination being made that reasonable suspicion drug testing is to occur; or 2. The employee being selected for follow-up or random drug testing.

(b) Receive written notice that they are being placed on directed sick leave status if a state employee,

(c) Be directed to leave the facility campus immediately; and

(d) Be subject to the provisions of Sections 4(2)(c) and 5 of this administrative regulation.

(2) A test-designated state employee who voluntarily discloses that he has entered into substance abuse treatment shall:

(a) Not be disciplined for self disclosure reporting provided that the self disclosure occurred prior to either of the following: 1. A determination being made that reasonable suspicion drug testing shall occur; or 2. The employee being selected for follow-up or random drug testing;

(b) Be informed that he shall be required to submit to follow-up drug testing; and

(c) Not provide direct care services until the follow-up drug test results are reported.

(3) A test-designated state employee may take advantage of opportunities specified in subsection (1) of this section no more often than two (2) times while employed at a facility. A state employee making a voluntary disclosure shall not be excused from a subsequent drug test or from otherwise complying in full with this administrative regulation. A state employee making a voluntary disclosure shall remain subject to drug testing requirements after making the disclosure and shall be subject to disciplinary action as a result of a subsequent positive drug test result report or a failed drug test.

(4) A test-designated employee of a contract agency who:

(a) Voluntarily discloses the misuse or abuse of a controlled substance or prescription or nonprescription medication or that he has entered into substance abuse treatment shall be informed that his employing agency shall be notified of the employee's self disclosure;

(b) Voluntarily discloses the misuse or abuse of a controlled substance or prescription or nonprescription medication or that he has entered into substance abuse treatment shall be informed that he shall not be allowed to return to work until he is in compliance with Section 5(3) of this administrative regulation.

(c) An employed pursuant to subsection (2) of this section, shall make a determination as to what disciplinary action, if any, shall be initiated with its employee, as well as any other condition for continued employment with the agency.

(5) The officer shall offer to assist a test-designated employee who voluntarily discloses the misuse or abuse of a controlled substance or prescription or nonprescription medication in obtaining substance abuse treatment services.

Section 8. Facility Employee Notification. (1) New test-designated facility employees shall receive information and training concerning this administrative regulation as part of the employee's initial orientation training.

(2) Current test-designated facility employees shall receive information and training concerning this administrative regulation prior to implementation of the test-designated employee drug testing program.

(3) Information and training provided pursuant to subsections (1) and (2) of this section shall include:

(a) Information regarding the type and nature of services and supports available through the Kentucky Employee Assistance Program;

(b) How to access these services and supports; and

(c) The availability of and how to access other local or regional substance abuse treatment services.

(4) The human resources office within each facility shall maintain documentation that all employees have received information and training concerning this administrative regulation.

(5) A test-designated facility employee shall sign a document certifying:

(a) Receipt of information and training concerning this administrative regulation;

(b) An understanding of the requirements, limitations, and restrictions on facility employee conduct contained in this administrative regulation and;

(c) An understanding of the potential consequences, up to and including dismissal, for violation of this administrative regulation.

Section 9. Drug Testing Guidelines. (1) Random drug testing of test-designated employees shall occur under the following guidelines:

(a) On-site random drug testing of test-designated employees shall occur on approximately a quarterly basis;

(b) The commissioner of the department shall determine the number and rate of test-designated employees who shall be directed to submit to random drug testing;

(c) Following consultation with and approval by their respective facility director and the commissioner of the department, the officer shall contact the designated contract vendor contact person to schedule and make arrangements for the next session of on-site random drug testing;

(d) The contract vendor shall provide the officer with a roster of the names of employees randomly selected to participate in the next session of on-site random drug testing at least two (2) weeks prior to the scheduled testing date. This roster shall include a sufficient number of alternate selections so as to allow for those employees originally selected to submit to random drug testing and who, for whatever reason, did not report to work on the scheduled testing date. The officer shall not disclose to any test-designated employees selected for testing the date and time of the scheduled random drug test prior to the date and time the employee is to report for testing;

(e) The officer, following consultation with and approval by his facility director, shall make adequate arrangements to ensure the ongoing orderly operation of the facility while the random drug testing is occurring. These arrangements shall include a master schedule of the order and time when selected employees shall be tested. This information shall not be shared with any employee or supervisor prior to the test date except in accordance with paragraph (f) of this subsection;

(f) The officer shall inform only those facility employees deemed to be absolutely necessary as to date and time of the next scheduled session of on-site random drug testing. A test-designated employee scheduled for testing shall not be notified that he has been selected for testing until the specified time and date the employee is to report for testing;

(g) Upon the date of the next scheduled session of on-site random drug testing, the officer shall inform a test-designated employee selected for random drug testing that he has been selected to submit to on-site random drug testing. This notification shall be made utilizing the highest possible degree of discretion and respect for the employee;

(h) The officer shall ensure that each test-designated employee selected for random drug testing shall arrive at the facility drug testing site at his scheduled time and shall monitor throughout the donor process; and

(i) A test-designated employee selected for random drug testing shall return to his regularly assigned job duties upon successful completion of the donor process.

(2) Reasonable suspicion drug testing of test-designated employees shall occur under the following guidelines:

(a) A test-designated employee shall be subject to drug testing if there is reasonable suspicion that the employee has violated provisions in this administrative regulation;

(b) Reasonable suspicion drug testing shall take place as soon as possible following the determination that reasonable suspicion exists. This testing shall take place on-site at the facility;

(c) A test-designated employee required to submit to reasonable suspicion drug testing shall not provide direct care services
until the drug test results have been reported;
(d) A determination that reasonable suspicion exists to require a test-designated employee to submit to drug testing shall be based on specific, immediate and clearly describable observations concerning the employee’s appearance, behavior, speech or body odors. Observations may include indications of the chronic and withdrawal effects of controlled substances;
(e) A reasonable suspicion determination shall be made only under the following conditions:
1. An initial reasonable suspicion determination is made concerning a test-designated employee by an individual in a position of supervisory authority at the facility;
2. The initial reasonable suspicion determination is verified by the administrator on duty or the officer; and
3. Prior to a facility employee making an initial reasonable suspicion determination or a reasonable suspicion determination verification, the employee shall have first received department approved training and instruction on how to make a reasonable suspicion determination.
3) Preappointment testing.
(a) An individual applying for employment at a department-operated facility shall submit to and successfully pass a drug test prior to gaining employment at the facility. Testing shall take place at an off-site testing site approved by the officer.
(b) An individual shall not begin employment at a facility if a positive drug test result or a failed drug test has been reported for the individual.
(c) An applicant who has a positive preappointment drug test result or who fails a preappointment drug test shall not be subsequently considered for appointment at a department operated facility for a period of at least one (1) year.
4) Follow-up testing.
(a) A test-designated employee shall submit to unscheduled follow-up drug testing if the employee has engaged in any of the following within the previous twenty-four (24) months:
1. Voluntarily admitted the misuse or abuse of a controlled substance or prescription or nonprescription medication;
2. Entered into or completed a rehabilitation program for drug abuse;
3. Had a positive drug test result reported or failed a drug test and dismissal did not occur;
4. Reports a criminal drug statute conviction; or
5. Been disciplined for violating the administrative regulation.
(b) A test-designated employee who is subject to follow-up drug testing shall not be required to submit to more than six (6) unscheduled follow-up drug tests within any twelve (12) month period.
(c) Follow-up drug testing shall take place at an off-site testing site as directed by the officer.

Section 10. Drugs Included. (1) If a drug test is administered prior to July 1, 2006, the department shall, at a minimum, test for:
(a) Manjana,
(b) Cocaine;
(c) Opiates;
(d) Amphetamines; and
(e) Phencyclidina,
(2) If a drug test is administered on or after July 1, 2006, the department shall, at a minimum, test for:
(a) Manjana;
(b) Cocaine;
(c) Opiates;
(d) Amphetamines;
(e) Phencyclidina;
(f) Morphine;
(g) MDMA (Ecstasy);
(h) Methadone;
(i) Benzodiazepines;
(j) Barbiturates; and
(k) Oxycodone
(3)(a) If conducting reasonable suspicion drug testing, the department may test for any drug listed in Schedule 1 or 2 as defined in KRS Chapter 216A.
(b) Before the department tests for other drugs, it shall first obtain approval from the appointing authority.
(c) If requesting approval for the testing of other drugs, the department shall first submit to the appointing authority the agency’s proposed initial test methods, testing levels, and proposed performance test program.
(4) This administrative regulation shall not limit an agency which is specifically authorized by law to include additional categories of drugs in the drug testing of its own employees.
(5) Initial and confirmatory drug testing conducted pursuant to this administrative regulation shall utilize cutoff levels as specified in the federal “Mandatory Guidelines for Federal Workplace Drug Testing Programs”.
(6) Drug test specimens that meet or exceed the cutoff levels as specified in subsection (5) of this section shall be reported as a positive test result.
(7) Drug test specimens that test below the cutoff levels as specified in subsection (5) of this section shall be reported as a negative test result and shall constitute a passed drug test. Further testing of a negative specimen for drugs shall not be permitted, and the negative specimen shall be discarded or pooled for use in a laboratory’s internal quality control program.

Section 11. Employee Duty to Report Convictions. A test-designated employee shall report a criminal drug statute violation for which he was convicted within five (5) working days of the conviction to the facility’s human resources officer. A test-designated employee who reports a criminal drug statute conviction shall be subject to follow-up drug testing.

Section 12. Prescription and Nonprescription Medications. (1) A facility employee taking a prescription or nonprescription medication prior to or during his work shift shall immediately inform his supervisor of this fact if:
(a) The instructions, indications, and contraindications associated with the medication give the employee reason to believe that the medication may in some way impair his work performance; or
(b) Having once taken the medication, the employee begins to experience an unexpected, atypical, or adverse reaction to the medication, which impairs his work performance.
(2) An employee who fails to comply with subsection (1) of this section shall be subject to disciplinary action, up to and including dismissal.
(3) Having been notified by an employee pursuant to Section 12(1), the employee’s supervisor shall closely monitor the employee’s work performance throughout the employee’s work shift.
(a) Should the supervisor determine that there is a sufficient perceived impairment of the employee’s work performance so as to raise concerns related to employee or patient safety, the supervisor shall notify the facility’s administrator on duty or the designee concerning the employee’s impaired work performance. The administrator on duty shall then conduct an assessment and make a determination regarding the employee’s impaired work performance.
(b) If the results of an assessment conducted pursuant to subsection (3) of this section indicate that the employee’s work performance is impaired so as to raise concerns related to employee or patient safety, the administrator on duty shall:
(a) Temporarily assign the employee to nonpatient related duties, provided that the temporary reassignment does not place the employee at risk of injury or otherwise jeopardize the orderly operation of the facility; or
(b) Allow the employee to leave from work utilizing accumulated leave time.
(5) The employee shall be allowed to return to his regular work duties if the results of an assessment conducted pursuant to subsection (3) of this section indicate that the employee’s work performance is not impaired.

Section 13. Dilute Specimen. (1) If a drug test is conducted in accordance with this administrative regulation and the test result is reported by the drug testing vendor as a dilute specimen, the officer shall:
(a) Inform the donor of the drug test result;
(b) Inform the donor that he shall be allowed one (1) opportunity to take a second drug test;
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(c) Direct the donor to take the second drug test as soon as possible; and
(d) Direct the donor not to ingest an excessive quantity of liquids prior to taking the second drug test.

(2) A second drug test administered pursuant to subsection (1) of this Section in which the test result is reported by the drug testing vendor as a dilute specimen shall be considered a failed drug test.


(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Mental Health and Mental Retardation Services, 100 Fair Oaks Lane, 4th floor, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

JOHN M. BURT, Commissioner
MIKE BURNSIDE, Deputy Secretary
MARK D. BIRDWHISTELL, Secretary

APPROVED BY AGENCY: May 30, 2006
FILED WITH LRC: June 6, 2006 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on July 21, 2006, at 9 a.m. in the Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky 40601, at which time the hearing shall be open to the public. Any person who attends a hearing shall be given an opportunity to comment on the proposed administrative regulation. The public hearing shall not be held if 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 until close of business on July 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 5 W-B, Frankfort, Kentucky 40601, phone (502) 564-7903, fax (502) 564-7575.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Randy Oliver 564-4680 or Kathy Burke 564-5827

(1) Provide a brief summary of:
(a) What the administrative regulation does: This administrative regulation establishes drug testing procedures for test-designated employees at state-operated facilities for individuals with mental illness or mental retardation.
(b) The necessity of this administrative regulation: This administrative regulation is necessary in order to ensure that individuals residing in state-operated facilities for individuals with mental illness or mental retardation:
(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 194A.025 and 210.010 authorize the secretary of the Cabinet for Health and Family Services to prescribe rules and regulations for the administration of the cabinet and the institutions under the control of the cabinet. KRS 194A.050 also empowers the secretary to promulgate administrative regulations covering any cabinet programs.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will allow for the establishment of a drug testing program to be conducted with test-designated employees at state-operated facilities for individuals with mental illness or mental retardation, thus helping to better ensure that employees at state-operated facilities residing in these 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 affected by this administrative regulation: A total of 8 facilities operated by the Department for Mental Health and Mental Retardation Services, with approximately 3,500 employees (both state and contract), 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: Employees at the state-operated facilities for individuals with mental illness or mental retardation will potentially be impacted in 4 ways:
(a) Prospective new test-designated employees will be required to successfully pass a drug test as a condition for employment;
(b) Up to 15% of the current test-designated workforce at the facilities will be subject to random drug tests per year;
(c) Any test-designated employee will be subject to drug testing when there is reasonable suspicion to believe that the employee is in violation of this administrative regulation; and
(d) Any test-designated employee who previously had a positive test result, failed a drug test or voluntarily disclosed the misuse or abuse of a controlled substance or prescription or non-prescription medication and have met the specified conditions to return to duty shall be subject to follow-up drug testing.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: The previous emergency administrative regulation included start-up costs. There are no new initial costs related to this administrative regulation.
(b) On a continuing basis: Costs related to the facility employee drug testing program are primarily dependent on the total number of drug tests to be administered, as well as the relative number of tests that will be administered at each facility (more expensive vs. the number of tests to be administered at the vendor's testing site (less expensive). Given that we do not have any past experience with facility employee drug testing, the following information reflects estimated ranges of potential costs:

Pre-Screening: Approximately 100-125 new facility employee screenings per month (1,200-1,500 annually) X $59 per test = $70,800 - $88,500 annually.

Random Testing: (350-525 tests annually X $59 per test) + ($250 on-site setup fee X 6 facility testing sites X 4 testing session per year) = $26,650 - $36,975 annually.

Reasonable Suspicion: 100 tests annually X $114 per test = $11,400 annually.

Follow-up: 100-200 tests annually X $59 per test = $5,900 - $11,600 annually.

Total Cost Range = $114,750 - $149,675.

In addition, costs for the ongoing administration of the drug testing program are estimated at $34,125 (salary and fringe for a .1 FTE program administrator X 6 facilities + .25 FTE central office administrator).

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: All costs associated with the drug testing of prospective or current test-designated facility employees will be borne by the facilities within their existing budgets. All costs associated with the central office administration of the drug testing program will be borne by the Department for Mental Health and Mental Retardation Services.

(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 are anticipated.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No new or increased fees are anticipated.
(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.
The June meeting of the Administrative Regulation Review Subcommittee was held on Tuesday, June 13, 2006, at 10:00 a.m., in Room 149 of the Capitol Annex. Representative Tanya Pullin called the meeting to order, and the roll call was taken. The minutes of the May 11, 2006 meeting were approved.

Present were:
Members: Representative Tanya Pullin, Co-Chair; Senator Richard "Dick" Roeding, Co-Chair; Senators Alice Kerr, Joey Pendleton, and Gary Tapp; Representatives James Bruce, Jimmie Lee, and Jon David Reinhardt.

LRC Staff: Dave Nicholas, Emily Caudill, Donna Little, Laura Milam, Karen Howard, Emily Hatkinson, Ellen Steinberg, and Roslyn Hendrickson.

Guests: Brenda Allen, Education Professional Standards Board; Kate Dunnigan, Sarah Bell Johnson, State Board of Elections; Laura Ferguson, Eddie Mattingly, Gary Moms, Angela C. Robison, Finance and Administration Cabinet; Nathan Goldman, Board of Nursing; James J. Graham, Vivek Rodes, DPM, Board of Podiatry; Timothy Robertson, Board for Professional Counselors; Benji Kinman, Jim Lane, Department of Fish and Wildlife Resources; Amy Barker, James Van Nort, Department of Corrections; Steve Lynn, Department of Criminal Justice Training; Philip J. Anderson, Steve Morrison, David Stumbo, Kendra Taylor, Department of Labor; Jeff Barnett, Glenn Bryant, Elizabeth Caywood, Wendy Cumpston, Steve Davis, David Gayle, Linda Hamey, Trish Howard, Shane O'Donley, Stuart Owen, Zach Ramsey, Dave Salenger, Cabinet for Health and Family Services; John Chilton, CPA, Penny Gold, Kentucky Society of CPAs; Elizabeth Cobb, Nancy Galvagni, Kentucky Hospital Association; and Rosanne Nields, Saint Elizabeth Medical Center.

The Administrative Regulation Review Subcommittee met on Tuesday, June 13, 2006, and submits this report:

Administrative Regulations Reviewed by the Subcommittee:

EDUCATION PROFESSIONAL STANDARDS BOARD: General Administration
16 KAR 1.055. Local educator assignment data. Brenda Allen, deputy executive director and general counsel, represented the Board.

A motion was made and seconded to approve the following amendments: to amend Section 7(1) to delete superfluous language as required by KRS 13A.222(4)(a). Without objection, and with agreement of the agency, the amendments were approved.

16 KAR 2.066. School nurse. In response to questions by Co-Chair Roeding, Ms. Allen stated that this administrative regulation had not been updated in over 20 years, had limited the number of nurses available to work in schools, and had established only one certification level for school nurses. The amended administrative regulation created three levels of certification and would allow more nurses to work in Kentucky's public schools.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 to 5 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

16 KAR 5.010. Standards for accreditation of educator preparation units and approval of programs. In response to questions by Co-Chair Roeding, Ms. Allen stated that Kentucky was required to follow the national standards adopted by NCATE, which required that the accreditation cycle be based on a seven year cycle, rather than a five year cycle. Kentucky would continue to monitor its institutions through annual reporting requirements and use of its quality performance index.

A motion was made and seconded to approve the following amendments: (1) to amend Section 5 to clarify the annual reporting requirements for institutions seeking accreditation; (2) to amend Section 23 to specify the requirements for requesting a waiver for alternative route programs; and (3) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 5, 9, 11, 19, 23, 25, and 27 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

18 KAR 6:000. Examination prerequisites for principal certification. In response to questions by Senator Tapp, Ms. Allen stated that she would inform Senator Tapp of the maximum score possible on the School Leaders Licensure Assessment.

In response to a question by Co-Chair Roeding, Ms. Allen stated that language that applied prior to September 2004 was outdated and thus had been deleted from this administrative regulation.

A motion was made and seconded to approve the following amendments: (1) to amend the STATUTORY AUTHORITY paragraph to correct a statutory citation; and (2) to amend Sections 2 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.

STATE BOARD OF ELECTIONS: Forms and Procedures

A motion was made and seconded to approve the following amendments: (1) to amend Section 1 to add a definition for "Elections Emergency Contingency Plan"; and (2) to amend Sections 2, 7, and 8 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

31 KAR 4:170 & E. Exceptions to prohibition on electioneering.

FINANCE AND ADMINISTRATION CABINET: Department of Revenue: General Administration
103 KAR 1.050 & E. Forms manual. Gary Moms, executive director, Laura Ferguson, general counsel, and Edda Mattingly, legislative liaison, represented the department. John Chilton, Kentucky Society of CPAs, appeared in support of these administrative regulations.

In response to questions by Senator Tapp, Mr. Moms stated that while some of these administrative regulations might be affected by a potential special session on tax issues, the department wanted the package of administrative regulations to continue through the regulatory process. In response to a question by Co-Chair Pullin, Ms. Ferguson stated that deferring the administrative regulations would not be beneficial to the taxpayers who needed the guidance provided by the package for their 2005 income tax returns.

In response to a question by Co-Chair Pullin, Ms. Chilton stated that the Kentucky Society of CPAs supported the package of administrative regulations and appreciated the department's willingness to work with their organization.

A motion was made and seconded to approve the following amendments: to amend Sections 1 to 22 to: (1) comply with the drafting and format requirements of KRS Chapter 13A; (2) correct the name and edition dates of the forms incorporated by reference; and (3) delete outdated forms no longer used by the Department of Revenue. Without objection, and with agreement of the agency, the amendments were approved.

Income Tax; General Administration
103 KAR 15.020 & E. Election to pay share of tax on behalf of corporation. A motion was made and seconded to approve the
following amendments: (1) to amend the RELATES TO paragraph to insert statutory citations; and (2) to amend Sections 2 and 3 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

103 KAR 15:100 & E. Nonrefundable and refundable corporation income tax credits. A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph to insert statutory citations; and (2) to amend Sections 1, 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.

Income Tax; Corporations

103 KAR 16:020 & E. Qualified exempt organization under KRS 141.040(8)(a). A motion was made and seconded to approve the following amendments: (1) to amend the TITLE 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; and (3) to amend Section 1 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

103 KAR 16:060 & E. Income classification; business and non-business. 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, as required by KRS 13A.220; (2) to amend Sections 2, 3, 4, 5, 7, 8, and 9 to comply with the drafting and format requirements of KRS Chapter 13A; and (3) to amend Section 7 to delete language relating to auditing the nonbusiness or nontaxable income of a taxpayer. Without objection, and with agreement of the agency, the amendments were approved.

103 KAR 16:090 & E. Apportionment; payroll factor. 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 Sections 1 and 2 to comply with the drafting and format requirements of KRS Chapter 13A; and (4) to amend Section 1 to specify that the corporation’s accounting method shall be the same method used for federal taxation purposes. Without objection, and with agreement of the agency, the amendments were approved.

103 KAR 16:150 & E. Apportionment and allocation; financial organizations and loan companies. A motion was made and seconded to approve the following amendments: (1) to amend the STATUTORY AUTHORITY 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; and (3) 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.

103 KAR 16:200 & E. Consolidated Kentucky corporation income tax return. 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, as required by KRS 13A.220; (2) to amend Sections 1, 2, 3, 4, 5, 6, 7, 8, and 9 to: (a) correct statutory citations; and (b) comply with the drafting and format requirements of KRS Chapter 13A; (3) to amend Sections 7 and 8 to specify that Form 722 shall be filed as required by 103 KAR 1:050, with all applicable schedules attached; and (4) to delete Section 10, the incorporation by reference section, to comply with KRS 141.140. Without objection, and with agreement of the agency, the amendments were approved.

103 KAR 16:210 & E. Calculation of gross income for corporations that are pass-through entities and treatment of certain deductions for their individual members, partners, and shareholders. A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph and Section 2 to correct statutory citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; and (3) to amend Section 1 to correct a typographical error. Without objection, and with agreement of the agency, the amendments were approved.

103 KAR 16:230 & E. Intangible expenses, intangible interest expenses and management fees. 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, as required by KRS 13A.220; and (2) 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.

103 KAR 16:240 & E. Nexus standard for corporations and general partnerships. A motion was made and seconded to approve the following amendments: (1) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 to 4 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

103 KAR 16:250 & E. Net operating loss deduction for corporations. 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, as required by KRS 13A.220; 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.

103 KAR 16:270 & E. Apportionment; sales factor. 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; (3) to amend Section 1 to create a definitions section and add a definition for "Gross receipts"; and (4) to amend Sections 1 through 3 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

103 KAR 16:290 & E. Apportionment; property factor. 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; (3) to amend Section 1 to clarify the definition of "Annual rent", delete the definition of "Annual rental rate," and move the requirements listed in these definitions to Section 7(1); (4) to amend Section 8 to state that fluctuations of more than fifty percent (50%) shall cause averaging by monthly values to apply; and (5) to amend Sections 1, 3, 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.

103 KAR 16:300 & E. Calculation of taxable net income for disregarded single member LLCs. 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; and (3) to amend Section 2 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

103 KAR 16:310 & E. Domestic production activity deduction. 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; and (3) to amend Sections 1 to 4 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

103 KAR 16:320 & E. Claim of Right Doctrine. 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; and (3) to amend Section 2 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

103 KAR 16:330 & E. Apportionment and allocation; separate accounting. 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, as required by KRS 13A.220; and (2) to amend Sections 1 and 2 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

103 KAR 16:340 & E. Apportionment and allocation; completed contract method. 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, as required by KRS 13A.220; and (2) to amend Sections 2 to 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.

Income Tax; Individual

103 KAR 17:060 & E. Income subject to taxation; portions. 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, as required by KRS 13A.220; and (2) to amend Sections 1 to 4 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

103 KAR 17:100 & E. Division of income between married individuals filing separate tax returns. 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; and (3) to amend Sections 1 and 3 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Income Tax; Withholding

103 KAR 18:070 & E. Supplemental wages and other payments subject to withholding. A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph to insert statutory citations; and (2) to amend Section 4 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

103 KAR 18.160 & E. Partnership income, credits, and payments subject to withholding. 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(4) to clarify that withholding requirements apply to nonresident individual partners; and (3) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 2 and 3 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

GENERAL GOVERNMENT CABINET: Board of Nursing: Board

103 KAR 20:370. Applications for licensure and registration. Nathan Goldman, general counsel, represented the board.

103 KAR 20:411. Sexual Assault Nurse Examiner Program standards and credential requirements.

Board of Podiatry: Board

201 KAR 25 031. Continuing education. Dr. Vivian Rodew, board member, and James Grawe, assistant attorney general, represented the board. In response to questions by Co-Chair Pullin, Dr. Rodes stated that there were only seven podiatry schools in the United States and graduates tended to stay in the general area of those schools. The closest podiatry school to Kentucky was located in Cleveland, Ohio.

A motion was made and seconded to approve the following amendments: to amend Sections 1, 2, 3, 5, and 7 for clarification and to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Board of Licensed Professional Counselors: Board

201 KAR 36.030. Continuing education requirements. Tim Robertson, board member, and James Grawe, assistant attorney general, represented the board.

A motion was made and seconded to approve the following amendments: (1) to amend Section 6(4) to cite to the relevant statutory provision rather than repeating it, as required by KRS 13A.120(2); and (2) to amend Sections 4, 6, 7, and 10 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 36:040. Code of ethics. A motion was made and seconded to approve the following amendments: (1) to delete Sections 4(4) and (5) because they repeated statutory provisions in violation of KRS 13A.120(2); and (2) to amend Sections 2, 3, 4, 5, and 8 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 36.070. Education requirements. A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph to add a relevant citation; and (2) to amend Sections 1 and 2 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

COMMERCE CABINET: Department of Fish and Wildlife Resources: Fish

301 KAR 1:015. Boats and motor restrictions. Jim Lana, wildlife director, and Benji Kinman, fisheries director, represented the department.

A motion was made and seconded to approve the following amendment: to amend Section 1 to correct a minor drafting error. Without objection, and with agreement of the agency, the amendment was approved.

301 KAR 1:110. Prohibition on raising or netting fish in public waters. 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 correct a minor drafting error; and (3) to amend
Section 2 to include a reference to the standards in 301 KAR 1:115, Section 6. Without objection, and with agreement of the
agency, the amendments were approved.

301 KAR 1:115. Propagation of aquatic organisms. A motion
was made and seconded to approve the following amendments: to
amend Sections 1, 3, 4 and 6 to comply with the drafting and
format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

301 KAR 1:122. Importation, possession; live fish. A motion
was made and seconded to approve the following amendment, to
amend Section 1 to correct a minor drafting error. Without objection,
and with agreement of the agency, the amendment was approved.

301 KAR 1:150. Waters open to commercial fishing. A motion
was made and seconded to approve the following amendments: to
amend Section 1 to comply with the drafting and format require-
ments of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

301 KAR 1:201. Fishing limits. A motion was made and sec-
doned to approve the following amendments: to amend Section 1
to correct minor drafting errors. Without objection, and with agree-
ment of the agency, the amendments were approved.

Game
301 KAR 2:050. Land Between the Lakes hunting require-
ments.

301 KAR 2:111. Deer and turkey hunting on special areas.

301 KAR 2:132. Elk depredation permits, landowner cooperator
permits, and quota hunts.

In response to questions by Senator Tapp, Mr. Lane stated
that all proceeds from the sale of landowner cooperator permits for
elk hunting went to help wildlife management. Proceeds from an
auction raffle by the nonprofit organization, Rocky Mountain Foun-
dation, went to an Appalachian wildlife initiative in Eastern Ken-
tucky.

In response to questions by Co-Chair Roeding, Mr. Lane
stated that this administrative regulation increased the elk tag fees
for residents by $5 and increased the fee amount for nonresidents
to make that fee more consistent with the fees charged for similar
activities in other states.

A motion was made and seconded to approve the following
amendments: (1) to amend Sections 3, 4, 5, and 7 to comply with
the drafting and format requirements of KRS Chapter 13A; and (2)
to amend Section 7 to require a landowner who sells a permit to
provide the department with information showing: (a) the sale price
of the permit; and (b) how the proceeds of the sale will be used in
the state for wildlife management. Without objection, and with agree-
ment of the agency, the amendments were approved.


301 KAR 2:176. Deer control tags. A motion was made and
seconded to approve the following amendment: to amend Section 2
to correct a minor drafting error. Without objection, and with agree-
ment of the agency, the amendment was approved.

301 KAR 2:178. Deer hunting on Wildlife Management Areas. A motion was made and seconded to approve the following
amendments: to amend Section 2 to correct minor drafting errors.
Without objection, and with agreement of the agency, the amend-
ments were approved.

301 KAR 2:179. State park deer hunts.
area (measured by area development districts) and exceptions based on high occupancy rates for individual hospitals. Those outdated tests did not factor in current medical practice, such as using acute care beds for patient observations to help determine if patients needed to be admitted to the hospital.

In response to questions by Representative Reinhardt, Ms. Galvagni stated that these two administrative regulations would have a positive impact on the general public since the standards were in line with current needs and medical practices. Mr. Barnett stated that the moratorium issued over the last decade regarding certificates of need had prevented growth and the amended administrative regulations considered Kentucky's aging population, service and provider access needs, and other factors. The result would be a positive impact, especially on the number of specialty beds, such as neonatal care beds.

In response to a question by Representative Bruce, Mr. Barnett stated that the Kentucky Medical Association provided input throughout the process as did providers in all practice areas.

In response to a question by Co-Chair Roeding, Ms. Galvagni stated that the Kentucky Hospital Association planned to send regulatory information to all hospitals regarding the changes made to these administrative regulations. Additionally, many hospitals had already submitted applications under the revised guidelines available under the emergency administrative regulations.

A motion was made and seconded to approve the following amendments: (1) to amend the STATUTORY AUTHORITY and NECESSITY, FUNCTION, AND CONFORMITY paragraphs to delete references to Executive Order; and (2) to amend Sections 1, 6, 7, 8, 12, 15, 16, 17, 18, 19, 20, 21, 27, 28, 29, and 30 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Office of Inspector General: Health Services and Facilities

902 KAR 20:091. Facilities specifications, operation and services; community mental health centers. Steve Davis, deputy inspector general, Zach Ramsey, division director, and Dave Sallings, branch manager, represented the office.

A motion was made and seconded to approve the following amendments: (1) to amend Sections 1, 5, and 6 to update citations; and (2) to amend Sections 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.

Department of Public Health: Controlled Substances

902 KAR 55:110. Monitoring system for prescription controlled substances. A motion was made and seconded to approve the following amendments: (1) to amend the STATUTORY AUTHORITY paragraph to delete 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 2(1) to reference statutory exceptions to reporting dispensed controlled substances; (4) to amend Sections 4(2) and 6 to include the correct forms and website to be used for requests for KASPER reports; and (5) to amend Sections 1, 2, 4, 5 and 6 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Office of Inspector General

906 KAR 1:110. Critical access hospital services. 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 4 to delete the phrase "on a twenty-four (24) hour basis" from certain hospital service requirements to avoid conflict with KRS 216.380(5)(b); and (3) to amend Sections 1, 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.

Department for Medicaid Services: Medicaid Services

907 KAR 1:019 & E. Outpatient Pharmacy Program. Stuart Owen, regulation coordinator, represented the department.

In response to questions by Representative Lee, Mr. Owen stated that he believed that prescription drugs used for smoking cessation purposes were excluded from coverage in compliance with federal requirements. He agreed to check on the reasons for that exclusion and inform the subcommittee.

In response to questions by Co-Chair Pullin, Mr. Owen stated that the department encouraged pharmacists to communicate with the prescribing physician regarding the prescriptions. However, Kentucky law did not mandate that physicians indicate the underlying medical diagnosis on a prescription. The department would audit a pharmacy that showed a continued pattern of excessive and inappropriate refills to the four-prescription limit. In response to a question by Representative Reinhardt, Mr. Owen stated that he did not know if indicating an underlying medical condition on a prescription form would violate patient rights under federal privacy laws.

In response to a question by Representative Lee, Mr. Owen stated that the department was working to educate individual pharmacies about the procedures relating to the outpatient pharmacy program and had not taken punitive action against a pharmacist for violating the four-prescription limit.

A motion was made and seconded to approve the following amendments: (1) to amend Section 3 to clearly establish the exceptions to the four prescription limit; and (2) to amend Sections 1 to 5 and 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.

907 KAR 1:022. Nursing facility services and intermediate care facility for individuals with mental retardation or a developmental disability services.

Department for Mental Health and Mental Retardation Services: Division of Administration and Financial Management: Institutional Care


In response to questions by Representative Reinhardt, Mr. Bryant stated that this amended administrative regulation increased the amount of deductions allowed in accordance with the federal poverty guidelines and would decrease the amount of money persons had to pay for services at a facility under this program.

A motion was made and seconded to approve the following amendments: (1) to amend the STATUTORY AUTHORITY paragraphs to correct statutory citations; and (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 2, 3, 4, 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.

Department for Community Based Services: Division of Policy Development: Food Stamp Program

921 KAR 3:060. Administrative disqualification hearings and penalties. Elizabeth Caywood, assistant director, and David Gayle, regulations coordinator, represented the department.

A motion was made and seconded to approve the following amendment: to amend Section 6(1) to delete the phrase "and benefit level" to comply with federal law. 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:

FINANCE AND ADMINISTRATION CABINET: Department of Revenue: General Administration

103 KAR 1:040 & E. Waiver of penalties.

Income Tax: General Administration

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

103 KAR 15:140 & E. Biodiesel tax credit.
Income Tax; Corporations
103 KAR 16:220 & E. Alternative minimum calculation. Gary Morris, executive director, Laura Ferguson, general counsel, and Eddie Mattingly, legislative liaison, represented the department.

In response to questions by Representative Bruce and Co-Chair Pullin, Ms. Ferguson and Mr. Morris stated that the department would agree to defer this administrative regulation due to the impending special session that might affect its provisions. The emergency administrative regulation would remain in effect until September 9, 2006.

Upon motion by Senator Kerr, seconded by Senator Pendleton, the subcommittee agreed to defer consideration of this administrative regulation.

GENERAL GOVERNMENT CABINET: State Board of Accountancy: Board
201 KAR 1:015. Meetings
201 KAR 1:050. License application.
201 KAR 1:190. Computer-based examination sections, applications, and procedures.

Real Estate Commission: Commission
201 KAR 11:011 & E. Definitions for 201 KAR Chapter 11.
201 KAR 11:121 & E. Improper conduct.

Board of Chiropractic Examiners: Board
201 KAR 21:025. Board; officers, duties.
201 KAR 21:031. Board meetings.
201 KAR 21:041. Licensing; renewals, fees.
201 KAR 21:045. Specialties.
201 KAR 21:051. Board hearings; complaints.
201 KAR 21:055. Colleges and universities; accreditation, approval.
201 KAR 21:060. Clinics; offices.
201 KAR 21:065. Professional advertising.
201 KAR 21:070. Licensing examination requirements.
201 KAR 21:075. Peer review procedures and fees.
201 KAR 21:080. Seventy-two (72) hour right of rescission.
201 KAR 21:085. Preceptorship program.
201 KAR 21:095. Licensure and registration of persons performing peer review.

Board of Physical Therapy: Board
201 KAR 22:045. Continued competency requirements and procedures.
201 KAR 22.070. Requirements for foreign-educated physical therapists.

JUSTICE AND PUBLIC SAFETY CABINET: Department of Juvenile Justice: Child Welfare
505 KAR 1:101E. Department of Juvenile Justice Scoring SOP.

EDUCATION CABINET: Kentucky Board of Education: Department of Education: Office of Instruction
704 KAR 3:305. Minimum requirements for high school graduation.

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET: Department of Public Protection: Office of Financial Institutions: Administration
808 KAR 1:050. Retention of records.

Kentucky Horse Racing Authority: Thoroughbred Racing

The subcommittee adjourned at 11:15 a.m. until July 11, 2006 at 10 a.m. in room 149 Capitol Annex.
CUMULATIVE SUPPLEMENT

Locator Index - Effective Dates A - 2

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 A - 8

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 A - 10

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.
The administrative regulations listed under VOLUME 32 are those administrative regulations that were originally published in Volume 32 (last year's) issues of the Administrative Register but had not yet gone into effect when the 2006 bound volumes were published.

**EMERGENCY ADMINISTRATIVE REGULATIONS:**
(Note: Emergency regulations filed on or after 2/20/05 expire 180 days from the date filed; or 180 days from the date filed plus number of days of requested extension, or upon replacement or repeal, whichever occurs first.)

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#### EMERGENCY ADMINISTRATIVE REGULATIONS:

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* Statement of Consideration not filed by deadline
** Withdrown, not in effect within 1 year of publication
*** Withdrawn before being printed in Register
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