ADMINISTRATIVE REGISTER OF KENTUCKY

LEGISLATIVE RESEARCH COMMISSION
Frankfort, Kentucky

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MEETING NOTICE: ARRS

The **Administrative Regulation Review Subcommittee** is **tentatively** scheduled to meet July 8, 2008 at 10 a.m. in room 149 Capitol Annex. See **tentative agenda** on pages **1-2** of this Administrative Register.

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

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

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ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE
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Board
201 KAR 7:015. Fees.

Kentucky Board of Veterinary Examiners

Board
201 KAR 16.110. Prescriptions and dispensation of drugs for animal use (Deferred from February)

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Board
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Board
201 KAR 20:070 & E. Licensure by examination. ("E" expires 11/1/08)

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201 KAR 23:015. Temporary permission to practice. (Written Comments Received)
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Department for Environmental Protection
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401 KAR 6:310. Water supply well construction practices and standards.
401 KAR 6:320. Certification of water well drillers.
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Water Quality Certification
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401 KAR 9 020. Section 401 Water Quality Certification fees. (Hearing/Written Comments)

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401 KAR 32.050. Special conditions. (Written Comments Received)

Standards for Owners and Operators; Storage, Treatment and Disposal Facilities
401 KAR 34:005. Definitions for 401 KAR Chapter 34. (Deferred from June)
401 KAR 34.080. General financial requirements. (Written Comments Received)

Interim Status Standards for Owners and Operators; Treatment, Storage and Disposal Facilities
401 KAR 35.005. Definitions for 401 KAR Chapter 35. (Deferred from June)
401 KAR 35.080. General financial requirements (IS). (Written Comments Received)

Standards for Management of Specific Hazardous Wastes and Specific Types of Hazardous Waste Management Facilities
401 KAR 36.030. Recyclable materials used in a manner constituting disposal. (Deferred from June)

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401 KAR 37:005. Definitions for 401 KAR Chapter 37. (Written Comments Received)
401 KAR 37:040. Treatment standards. (Deferred from June)

Hazardous Waste Permitting Process
401 KAR 38:005. Definitions for 401 KAR Chapter 38. (Written Comments Received)
401 KAR 38 040. Changes to permits; expiration of permits. (Deferred from June)

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401 KAR 43:005. Definitions for 401 KAR Chapter 43. (Deferred from June)

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Kentucky Vehicle Enforcement

Vehicle Enforcement
500 KAR 14:010. Motor Carrier safety requirements.
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Department of Corrections

Office of the Secretary

501 KAR 6.020. Corrections policies and procedures.
501 KAR 6.140. Bell County Forestry Camp.

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Driver Improvement
601 KAR 13:070. KRS 159.051. Compliance verification for a minor. (Amended After Comments) (Deferred from January)

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Department of Education

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School Terms, Attendance and Operation
702 KAR 7:065. Designation of agent to manage high school interscholastic athletics. (Not Amended After Comments) (Deferred from May)

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department of Public Protection
Office of Insurance

Trade Practices and Frauds
806 KAR 12:180. Military sales practices. (Not Amended After Comments) (Deferred from March)
Kentucky Horse Racing Authority

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900 KAR 6:050 & E. Certificate of need administrative regulation. ("E" expires 10/26/08)
Office of the Secretary

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Aging Services
910 KAR 1:160. Program and certification requirements for the adult day and Alzheimer's respite program.
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Food Stamp Program
921 KAR 3:030. Application Process.
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922 KAR 1:310. Standards for child-placing agencies. (Written Comments Received)

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

Filing and Publication

Administrative bodies shall file with the Regulations Compiler all proposed administrative regulations, public hearing and comment period information, regulatory impact analysis and tiering statement, fiscal note, federal mandate comparison, and incorporated material information. Those administrative regulations received by the deadline established in KRS 13A.050 shall be published in the Administrative Register.

Public Hearing and Public Comment Period

The administrative body shall schedule a public hearing on proposed administrative regulations which shall not be held before the 21st day or later than the last workday of the month of publication. Written comments shall also be accepted until the end of the calendar month in which the administrative regulation was published.

The administrative regulation shall include: the place, time, and date of the hearing; the manner in which persons may submit notification to attend the hearing and written comments; that notification to attend the hearing shall be sent no later than 5 workdays prior to the hearing date; the deadline for submitting written comments; and the name, position, address, and telephone and fax numbers of the person to whom notification and written comments shall be sent.

The administrative body shall notify the Compiler, by phone and letter, whether the hearing was held or cancelled and whether written comments were received. If the hearing was held or written comments were received, the administrative body shall file a statement of consideration with the Compiler by the fifteenth day of the calendar month following the month of publication.

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.

REPRINTS

201 KAR 21:070 was printed in the April edition of 34 Ky.R. on page 2280. The text in Section 1(1)(b) stating: "(b) The applicant shall also pass the National Board of Chiropractic Examiners Physiotherapy examination administered by the National Board of Chiropractic Examiners." was not correctly shown as text to be deleted. The corrected and effective version of the administrative regulation is shown below.

GENERAL GOVERNMENT CABINET
Board of Chiropractic Examiners

201 KAR 21:070. Licensing examination requirements.

RELATES TO: KRS 312.019(9), 312.115(2)
STATUTORY AUTHORITY: KRS 312.019(9), 312.115
NECESSITY, FUNCTION, AND CONFORMITY: KRS 312.019(9) authorizes the Kentucky Board of Chiropractic Examiners to promulgate administrative regulations consistent with KRS Chapter 312. KRS 312.115(2) provides that the examination for a chiropractic license may consist in part of the National Board Examination of the National Board of Chiropractic Examiners. This administrative regulation establishes the chiropractic licensing examination procedures.

Section 1. (1) An applicant for licensure shall hold a National Board of Chiropractic Examiners Certificate of Attainment, which indicates that the applicant has passed the National Board of Chiropractic Examiners examination, parts I, II, III, and IV.

(2)(a) An official National Board of Chiropractic Examiners transcript of scores for parts I, II, III, and IV shall be on file with the Kentucky Board of Chiropractic Examiners.

(b) Official transcripts shall be requested by the applicant to be sent to the Kentucky Board of Chiropractic Examiners directly from the National Board of Chiropractic Examiners.

(3) The state's requirement for successful completion (passage) of all parts of the National Board of Chiropractic Examiners examination shall be the National Board of Chiropractic Examiners recommended passing score. (16 Ky.R. 93, eff. 9-2-89; 34 Ky.R. 1532; 2186; 2280, eff. 5-2-2008.)

STATEMENT OF EMERGENCY
302 KAR 76:110E

Pursuant to KRS 13A.190, the Governor of the Commonwealth of Kentucky does hereby declare that the proposed administrative regulation should be enacted on an emergency basis in order to allow older retail motor fuel dispensers, which cannot compute a total unit price above $3.999, to provide motor fuel in gallon increments without displaying the dispenser price while equipment to alter the dispensers is ordered and installed. It is necessary to promulgate this administrative regulation on an emergency basis because the normal process cannot timely accommodate the situation created by the escalating price of motor fuel and older retail fuel dispensers. Requiring older retail motor fuel dispensers to shut down while modification devices are ordered and installed will create a hardship on the retailers and consumers, especially those in rural areas of the state. This emergency regulation will allow those retailers to continue to sell motor fuel and at the same time will protect the consumer of these fuels by requiring appropriate signage. However, this emergency administrative regulation does not suspend the statutory duty under KRS 363.760 for a retail facility to fully inform a consumer about the price at which motor fuel may be purchased at a particular motor fuel dispenser. This emergency Administrative regulation will expire August 31, 2008, and will not be replaced by an ordinary administrative regulation.

STEVEN L. BESHEAR, Governor
RICHIE FARMER, Commissioner

DEPARTMENT OF AGRICULTURE
(New Emergency Administrative Regulation)

302 KAR 76:110E. Temporary suspension for retail fuel dispensers.

RELATES TO: KRS 363.900-363.908, 363.700, 363.760
STATUTORY AUTHORITY: KRS 363.902, 363 590
NECESSITY, FUNCTION, AND CONFORMITY: KRS 363.902 requires the Commissioner of the Department of Agriculture to implement and administer an inspection and testing program for motor fuels. KRS 363.590(3) requires that the National Bureau of Standards Handbook 44 is used to establish specifications for commercial weighing and measuring devices, except insofar as specifically modified by administrative regulation. The net effect is to prohibit pricing other than that which displays and computes the total purchase price on retail fuel dispensers. This emergency administrative regulation temporarily suspends this restriction, solely to allow older retail fuel dispensers which cannot compute a total unit price above 3.999, to provide motor fuel in gallon increments without displaying the dispenser price while equipment is installed to correct the display problem; however, this emergency administration regulation does not suspend the statutory duty under KRS 363.760 for a retail facility to fully inform a consumer about the price at which motor fuel may be purchased at a particular fuel dispenser.

Section 1. Application. (1) Retail fuel dispensers, which cannot compute a total unit price above 3 999, shall be allowed to price motor fuel in gallon increments at a price other than that displayed and computed on the actual fuel dispenser, except;

(a) All other requirements under law shall remain in effect;

(b) The retail fuel facility shall:

1. Prominently, clearly and conspicuously display the total price per gallon on all signage;

2. Alter all dispensers affected to display only gallons delivered. All price indicators on the motor fuel dispensers shall be covered and removed from view of the consumer;

3. Provide the consumer with a printed ticket stating details of the transaction, total gallon price x total gallons delivered=total sale; and

4. Set all dispensers to prepay only.

(c) The retail fuel facility shall provide the department or the department's appointed representatives with proof of purchase for necessary replacement parts no more than fifteen (15) business days following the implementation of this administrative regulation. A copy of the invoice shall be kept at each retain fuel facility and be made available for inspection during normal operating hours, until the repairs are completed; and

(d) All modifications must be completed with sixty (60) days from the date of the invoice which ordered the replacement parts.

(2) This emergency administrative regulation shall remain in effect until August 31, 2008.

RICHIE FARMER, Commissioner
APPROVED BY AGENCY: June 2, 2008
FILED WITH LRC: June 2, 2008 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 21, 2008, at 10 a.m. at the Department of Agriculture, Frankfort, Kentucky 40601. Individuals interested in being heard at the hearing shall notify this agency in writing at least 5 workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by July 14, 2008, 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, 2008. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON. Tom Bloemer, 109 Corporate Drive, Frankfort, Kentucky 40601, phone (502) 573-0282, fax (502) 573-0303.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Tom Bloemer

(1) Provide a brief summary of:

(a) What this administrative regulation does: This emergency regulation temporarily allows older retail motor fuel dispensers which cannot compute a total unit price above $3.999 to provide motor fuel in gallon increments without displaying the fuel dispenser price while equipment is ordered and installed to correct the display problem; however, this emergency regulation does not suspend the statutory duty under KRS 363.760 for a retail facility to fully inform a consumer about the price at which motor fuel may be purchased at a particular motor fuel dispenser.

(b) The necessity of this administrative regulation: KRS 363.760 prohibit pricing other than that which displays and computes the total purchase price on retail motor fuel dispensers. Some older model motor fuel dispensers cannot compute a total price above $3 999.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 363 590 adopts the National Institute of Standards and Technology which prohibits pricing other than that which is displayed on a retail motor fuel dispenser; however, the statute also allows for modification and amendment to these requirements by administrative regulation.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: Will establish requirements for use of older retail motor fuel dispensers.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of: This is not amendment to an existing regulation, therefore, (2) a-d is not applicable.

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

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Retail facilities that have motor fuel dispensers that cannot compute a total price above $3.999 and consumers will be affected. Approximately 5-10% of licensed retail facilities may be affected.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Until the motor fuel dispensers are altered, the entities will be required to post appropriate signage, cover the dispenser price, display gallons pumped only, provide the consumer with a ticket at the end of the transaction and order and install parts to correct the display problem.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Original costs of compliance is negligible. Purchase and installation of corrective parts will vary from facility to facility. Consumers will have no cost.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Facilities with older motor fuel dispensers will be able to continue to legally sell fuel. Consumers will benefit by being advised of the full purchase price.

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

(a) Initially: Administrative costs will be minimal.

(b) On a continuing basis: The emergency regulation will only be in effect until August 31, 2008.

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

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No fees are directly or indirectly established or increased.

(9) TIERING: Is tiering applied? Tiering is not applied as this regulation applies equally to all regulated entities.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

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

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 363.900-363.908, 363.700, 363.760.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. There are no revenues and expenses will be negligible if any.

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

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

(c) How much will it cost to administer this program for the first year? Negligible

(d) How much will it cost to administer this program for subsequent years? Negligible

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation: The department already has an inspection function and the affected entities are currently inspected by the department.

STATEMENT OF EMERGENCY
401 KAR 10:001E

KRS 224.10-100, 224.70-100, and 224.70-110 authorize the cabinet to establish administrative regulations to protect water quality. There is currently no definitions regulation governing the terms used in 401 KAR Chapter 10. This emergency administrative regulation is necessary to protect human health and the environment. Without the emergency regulation, the regulated community will have no reference for terms used in the chapter. A misunderstanding of terms used in the water quality standards regulations may cause a hazard to human health and the environment. The time required to promulgate an ordinary administrative regulation creates a lapse in the understanding of the regulated community. The emergency administrative regulation will be replaced by an ordinary administrative regulation. The ordinary administrative regulation is identical to this emergency administrative regulation.

STEVEN L. BESHEAR, Governor
ROBERT D. VANCE, Secretary

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department for Environmental Protection
Division of Water
(New Emergency Administrative Regulation)

401 KAR 10:001E. Definitions for 401 KAR Chapter 10.

RELATES TO: KRS 146.200-146.360, 146.410-146.535, 146.550-146 570, 146.600-146.619, 146.990, 224.01-010, 224 01-400, 224.16-050, 224.16-070, 224.70-100-224.70-140, 224.71-100-224.71-145, 224.73-100-224.73-120, 40 C.F.R. Part 136

STATUTORY AUTHORITY: KRS 224.10-100, 224.70-100, 224.70-110

EFFECTIVE: June 12, 2008

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100 authorizes the Environmental and Public Protection Cabinet to promulgate administrative regulations for the prevention, abatement, and control of all water pollution. This administrative regulation establishes definitions for terms used in 401 KAR Chapter 10.

Section 1. Definitions. (1) "Acute-chronic ratio" means the ratio of the acute toxicity, expressed as an LC_{50}, of an effluent or a toxic substance, to its chronic toxicity. It is used as a factor to estimate chronic toxicity from acute toxicity data.

(2) "Acute criteria" means the highest instream concentration of a toxic substance or an effluent to which an organism can be exposed for a brief period of time without causing an unacceptable harmful effect.

(3) "Acute toxicity" means lethality or other harmful effect sustained by either an indigenous aquatic organism or a representative indicator organism used in a toxicity test, due to a short-term exposure, of ninety-six (96) hours or less, to a specific toxic substance or mixture of toxic substances.

(4) "Acute toxicity unit" means the reciprocal of the effluent dilution that causes the acute effect, or LC_{50}, by the end of the acute exposure period.

(5) "Adversely affect" or "adversely change" means to alter or change the community structure or function, to reduce the number or proportion of sensitive species, or to increase the number or proportion of pollution tolerant aquatic species so that aquatic life use support or aquatic habitat is impaired.

(6) "Arithmetic mean for seven (7) consecutive days" means the average of a minimum of two (2) samples taken on separate days in a seven (7) day period.

(7) "Arithmetic mean for thirty (30) consecutive days" means the average of a minimum of three (3) samples collected in separate calendar weeks during a period of thirty (30) consecutive days with a minimum of twenty (20) days occurring between the first and last sample days.

(8) "Balanced indigenous community" means a biotic community typically characterized by diversity, the capacity to sustain itself through cyclic seasonal changes, presence of necessary food chain species, and a lack of domination by pollution tolerant species. The community may include historically nonnative species introduced in connection with a program of wildlife management and species whose presence or abundance results from substantial, irreversible environmental modification. Normally such a community does not include species whose presence or abundance is attributable to the introduction of pollutants that will be eliminated by compliance of all sources with 401 KAR 5.065, and may not include species whose presence or abundance is attributable to alternative effluent limitations imposed pursuant to 401 KAR 5:055.

(9) "Best management practices" or "BMPs" means:

(a) Schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of waters of the commonwealth; and

(b) Include treatment requirements, operating procedures, practices to control site run-off, pollution of surface water and groundwater from nonpoint sources, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.

(10) "Biochemical oxygen demand", "BOD", or "BOD_5" means the amount of oxygen required to stabilize biodegradable organic matter under aerobic conditions within a five (5) day period. Other time periods may be measured, and if so, are indicated where the term is used.

(11) "Carbonaceous biochemical oxygen demand" or "CBOD" means BOD, not including the nitrogenous oxygen demand of the wastewater.

(12) "Chronic criteria" means the highest instream concentration of a toxic substance or an effluent to which organisms are able to be exposed indefinitely without causing an unacceptable harmful effect.

(13) "Chronic toxicity" means lethality, reduced growth or reproduction, or other harmful effect sustained by either indigenous aquatic organisms or representative indicator organisms used in toxicity tests due to long-term exposures, relative to the life span of the organisms or a significant portion of their life span, to toxic substances or mixtures of toxic substances.

(14) "Chronic toxicity unit" means the reciprocal of the effluent dilution that causes twenty-five (25) percent inhibition of growth or reproduction to the test organisms by the end of the chronic exposure period.

(15) "Clean Water Act" or "CWA" means the Clean Water Act as subsequently amended, 33 U.S.C. Section 1251 through 1387, otherwise known as the Federal Water Pollution Control Act.

(16) "Coal remining operation" means:

(a) A surface coal mining operation which begins after July 11, 1990, at a site on which a coal mining operation was conducted before August 3, 1977; and

(b) A surface coal mining operation existing on July 11, 1990, which receives a permit revision from the Department for Surface Mining Reclamation and Enforcement (DSMRE) in accordance with 405 KAR 8 010, Section 20, for a site on which a coal mining operation was conducted before August 3, 1977.

(17) "Cold water aquatic habitat" or "CAH" means surface waters and associated substrate that are able to support indigenous aquatic life or self-sustaining or reproducing trout populations on a year-round basis.

(18) "Concentrated animal feeding operation" is defined by 401 KAR 5.002, Section 1(37).

(19) "Conventional pollutant" means biochemical oxygen demand (BOD), chemical oxygen demand (COD), total organic carbon (TOC), total suspended solids (TSS), ammonia (as N), bromide, chlorine (total residual), color, fecal coliform, fluoride, nitrate, kjeldahl nitrogen, oil and grease, and phosphorus.

(20) "Conventional treatment" means or includes coagulation, sedimentation, filtration, and disinfection.

(21) "Criteria" means specific concentrations or ranges of values, or narrative statements of water constituents which represent a quality of water expected to result in an aquatic ecosystem protective of designated uses of surface waters. Criteria are derived to protect legitimate uses such as aquatic life, domestic water supply, and recreation and to protect human health.

(22) "Day" means a twenty-four (24) hour period.

(23) "Discharge" or "discharge of a pollutant" means the addition of a pollutant or combination of pollutants to waters of the commonwealth from a point source.

(24) "Division" means the Kentucky Division of Water, within the Department for Environmental Protection, Environmental and Public Protection Cabinet.

(25) "Domestic" means relating to household wastes or other similar wastes. It is used to distinguish municipal, household, or commercial water or wastewater services from industrial water or wastewater services.

(26) "Domestic sewage" means sewage devoid of industrial or other wastes and that is typical of waste received from residential facilities. It may include wastes from commercial developments, schools, restaurants, and other similar developments.

(27) "Domestic water supply" or "DWS" means surface waters that with conventional treatment are suitable for human consumption through a public water system as defined in 401 KAR 8.010, culinary purposes, or for use in a food or beverage processing industry; and meet state and federal regulations under the Safe Drinking Water Act, as amended, 42 U.S.C. 300f - 300j-26.

(28) "Effluent limitations" is defined at KRS 224.01-010(12).

(29) "Environmental Protection Agency" or "EPA" means the United States Environmental Protection Agency.

(30) "Epilimnion" means the thermally homogeneous water layer overlying the metalimnion of a thermally stratified lake or reservoir.

(31) "E. coli" or "Escherichia coli" means an aerobic and facultative anaerobic gram negative, nonspore forming, rod shaped bacterium that can grow at forty-four and five tenths (44.5) degrees Celsius, that is ortho-nitrophenyl-B-D-galactopyranoside (ONPG) positive, and Methylumbelliferyl glucuronide (MUG) positive. It is a member of the indigenous fecal flora of warm-blooded animals.

(32) "Eutrophication" means the enrichment of a surface water by the discharge or addition of a nutrient.

(33) "Exceptional water" means a surface water categorized as exceptional by the cabinet pursuant to 401 KAR 10.030.

(34) "Existing use" means a legitimate use being attained in or on a surface water of the commonwealth on or after November 28, 1975, irrespective of its use designation.

(35) "Expanded discharge" means an increase in pollutant loading of twenty (20) percent or greater.

(36) "°F" means degrees Fahrenheit.

(37) "General permit" means a KPDES permit authorizing a category of discharges under KRS Chapter 224 within a geographical area, issued under 401 KAR 5:055.

(38) "Harmonic mean flow" means the reciprocal of the mean of the reciprocal daily flow values.

(39) "High quality water" means a surface water categorized as high quality by the cabinet pursuant to 401 KAR 10:030.

(40) "Impact" means a change in the chemical, physical, or biological quality or condition of a surface water.

(41) "Impairment" means a detrimental impact to a surface water that prevents attainment of a designated use.

(42) "Indigenous aquatic community" means naturally occurring aquatic organisms including bacteria, fungi, algae, aquatic insects, other aquatic invertebrates, reptiles, amphibians, and fishes. Under some natural conditions one (1) or more of the above groups may be absent from a surface water.

(43) "Inhibition concentration of twenty-five (25) percent" or "IC_{25}" means the concentration that is determined by a linear interpolation method for estimating the concentration at which a twenty-five (25) percent reduction is shown in reproduction or growth in test organisms, and which statistically approximates the concentration at which an unacceptable chronic effect is not observed.

(44) "Intermittent water" means a stream that flows only at certain times of the year.

(45) "Kentucky Pollutant Discharge Elimination System" or "KPDES" means the Kentucky program for issuing, modifying, revoking and reissuing, revoking, monitoring and enforcing permits to discharge, and imposing and enforcing pretreatment requirements.

(46) "KPDES permit" means a Kentucky Pollutant Discharge Elimination System permit issued to a facility, including a POTW, or activity pursuant to KRS Chapter 224 for the purpose of operating the facility or activity.

(47) "LC_1" means that concentration of a toxic substance or mixture of toxic substances that is lethal, or immobilizing if appropriate, to one (1) percent of the organisms tested in a toxicity test during a specified exposure period.

(48) "LC_{50}" means that concentration of a toxic substance or mixture of toxic substances that is lethal, or immobilizing if appropriate, to fifty (50) percent of the species tested in a toxicity test during a specified exposure period.

(49) "Maintain" means to preserve or keep in present condition by not allowing an adverse permanent or long-term change to water quality or to a population of an aquatic organism or its habitat.

(50) "Measurement" means the ability of the analytical method or protocol to quantify as well as identify the presence of the substance in question.

(51) "µg/l" means micrograms per liter, same as ppb, assuming unit density.

(52) "mgd" or "MGD" means million gallons per day.

(53) "Milligrams per liter" or "mg/l" means the milligrams of substance per liter of solution, and is equivalent to parts per million in water, assuming unit density.

(54) "Mixing zone" means a domain of a water body contiguous to a treated or untreated wastewater discharge with quality characteristics different from those of the receiving water. The discharge is in transit and progressively diluted from the source to the receiving system. The mixing zone is the domain where wastewater and receiving water mix.

(55) "Modified Warm Weather Aquatic Habitat" means water that has been found to be incapable of supporting and maintaining a balanced, integrated, adaptive community of warm water organisms because of largely irretrievable man-induced changes in the watershed or to the physical habitat of the stream itself.

(56) "Natural temperature" means the temperature that would exist in waters of the commonwealth without the change of enthalpy of artificial origin, as contrasted with that caused by climatic change or naturally occurring variable temperature associated with riparian vegetation and seasonal changes.

(57) "Natural water quality" means those naturally occurring physical, chemical, and biological properties of waters.

(58) "Net discharge" means the amount of substance released to a surface water by excluding the influent value from the effluent value if both the intake and discharge are from and to the same or similar body of water.

(59) "Nonconventional pollutant" means a pollutant not considered to be a conventional pollutant, including priority pollutants identified in 401 KAR 5:060.

(60) "Nonpoint" means any source of pollutants not defined by a point source.

(61) "Outstanding national resource water" means a surface water categorized by the cabinet as an outstanding national resource water pursuant to 401 KAR 10:030.

(62) "Outstanding state resource water" means a surface water designated by the cabinet as an outstanding state resource water pursuant to 401 KAR 10.031.

(63) "pCi/l" means picocuries per liter.

(64) "PCR" means primary contact recreation.

(65) "Point source" means a discernible, confined, and discrete conveyance from which pollutants are or may be discharged. The term does not include agricultural storm water run-off or return flows from irrigated agriculture.

(66) "POTW" means publicly-owned treatment works as defined in KRS 224.01-010.

(67) "Preexisting discharge" means a discharge that is occurring when applying for a KPDES permit under 401 KAR 5:040 or 401 KAR 10.029.

(68) "Primary contact recreation water" means those waters suitable for full body contact recreation during the recreation season of May 1 through October 31.

(69) "Productive aquatic community" means an assemblage of indigenous aquatic life capable of reproduction and growth.

(70) "Propagation" means the continuance of a species by successful spawning, hatching, and development or natural generation in the natural environment, as opposed to the maintenance of the species by artificial culture and stocking.

(71) "Regional facility plan" means a type of water quality management plan addressing point sources of pollution for the purpose of areawide waste treatment management planning prepared by the designated regional planning agency pursuant to Section 201, 205, and 208 of the Clean Water Act to control point sources of pollution within a planning area.

(72) "Remined area" means only that area of a coal remining operation on which a coal mining operation was conducted before August 3, 1977.

(73) "Representative indicator organism" means an aquatic organism designated for use in toxicity testing because of its relative sensitivity to toxicants and its widespread distribution in the aquatic environment.

(74) "SCR" means secondary contact recreation.

(75) "Secondary contact recreation waters" means those waters suitable for partial body contact recreation, with minimal threat to public health due to water quality.

(76) "Seven-Q-ten" or "$7Q_{10}$" means that minimum average flow which occurs for seven (7) consecutive days with a recurrence interval of ten (10) years.

(77) "Source" means a building, structure, facility, or installation from which there is or may be a discharge of pollutants.

(78) "Standard" means a water quality standard.

(79) "Stormwater" means stormwater run-off, snow melt run-off, and surface run-off and drainage.

(80) "Surface waters" means those waters having well-defined banks and beds, either constantly or intermittently flowing; lakes and impounded waters; marshes and wetlands; and any subterranean waters flowing in well-defined channels and having a demonstrable hydrologic connection with the surface. Effluent ditches and lagoons used for waste treatment that are situated on property owned, leased, or under valid easement by a permitted discharger are not considered to be surface waters of the commonwealth.

(81) "Total dissolved solids" or "TDS" means the total dissolved solids (filterable residue) as determined by use of the method specified in 40 C.F.R. Part 136.

(82) "Total suspended solids" or "TSS" means the total suspended solids (nonfilterable residue) as determined by use of the method specified in 40 C.F.R. Part 136.

(83) "Toxic substance" means a substance that is bioaccumulative, synergistic, antagonistic, teratogenic, mutagenic, or carcinogenic and causes death, disease, a behavioral abnormality, a physiological malfunction, or a physical deformity in an organism or its offspring or interferes with normal propagation.

(84) "U S. EPA" means the United States Environmental Protection Agency.

(85) "Warm water aquatic habitat" or "WAH" means a surface water and associated substrate capable of supporting indigenous warm water aquatic life.

(86) "Wetlands" means land that has a predominance of hydric soils and that is inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances does support, a prevalence of hydrophytic vegetation typically adapted for life in saturated soil conditions.

(87) "Zone of initial dilution" means the limited area permitted by the cabinet surrounding or downstream from a discharge location where rapid, first-stage mixing occurs. The zone of initial dilution is the domain where wastewater and receiving water initially mix.

ROBERT D. VANCE, Secretary
APPROVED BY AGENCY: June 6, 2008

FILED WITH LRC: June 12, 2008 at 10 a.m.

CONTACT PERSON: Abigail Powell, Regulations Coordinator, Division of Water, 14 Reilly Road, Frankfort, Kentucky 40601, phone (502) 564-3410, fax (502) 564-0111, email Abigail.Powell@ky gov

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Sandy Gruzesky, Director

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes definitions for terms used in 401 KAR Chapter 10.

(b) The necessity of this administrative regulation: This regulation defines the terms used in the chapter.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 224.10-100, 224.70-100, and 224.70-110 authorize the cabinet to establish administrative regulations to protect water quality.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will provide definitons for terms used throughout the chapter so that the other regulations in the chapter may be properly interpreted and enforced.

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

(a) How the amendment will change this existing administrative regulation: Not applicable; this is a new administrative regulation.

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All individuals, businesses, organizations, and governments that use the Commonwealth's surface waters for residential, commercial, industrial, or recreational purposes could be impacted by this regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: None

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no cost.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Affected entities will be able to understand the terms used throughout 401 KAR Chapter 10.

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

(a) Initially: There are no initial costs as a result of creating this administrative regulation.

(b) On a continuing basis: There are no continuing costs as a result of creating this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation? Not applicable.

(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 established any fees or directly or indirectly increased any fees: This administrative regulation does not establish or increase fees.

(9) TIERING: Is tiering applied? Tiering is not applied because definitions do not require tiering.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Government entities using these regulations will be able to find definitions for terms used throughout the chapter.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 224.10-100, 224.70-100, and 224.70-110 authorize the cabinet to establish administrative regulations to protect water quality

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

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

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

(c) How much will it cost to administer this program for the first year? There will be no cost.

(d) How much will it cost to administer this program for subsequent years? There will be no cost.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

ADMINISTRATIVE REGULATIONS AS AMENDED BY PROMULGATING AGENCY AND REVIEWING SUBCOMMITTEE

ARRS = Administrative Regulation Review Subcommittee
IJC = Interim Joint Committee

KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY
Division of Student and Administrative Services
(As Amended at ARRS, June 10, 2008)

11 KAR 18:010. Robert C. Byrd Honors Scholarship Program.

RELATES TO. KRS 164 744(2), 164.748(7), (8), 34 C.F.R. 654.1-654.5, 654.30-654.52, 20 U.S.C. 1070d-31-1070d-41

STATUTORY AUTHORITY: KRS 164.748(4), 164.753(3), 34 C.F.R. 654.30, 654.41, 20 U.S C. 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 act" 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 sum of the scores achieved on the critical reading and mathematics components of [~~composite score achieved on~~] the Scholastic Aptitude Test at a national test site on a single 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. (1)[~~Applications submitted by individual students shall not be accepted.~~] In order for an eligible student to be considered for an award under this program:

(a)[~~(1)~~] The eligible student shall not have applied for consideration in a prior year; and

(b) The requirements of either subsection (2) or (3) of this section shall be met.

(2) High school students.

(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 Application set forth in 11 KAR 4:080, Section 1(5)(a).

(b) The application shall be accompanied by the following supporting documentation pertaining to the eligible student:

1. A certified transcript showing the cumulative grade point average as of the most recent semester completed prior to the high school guidance counselor's certification [~~for seven (7) semesters of high school~~];

2. An official ACT score or SAT score;

3. A high school guidance counselor's recommendation, not exceeding 150[~~fifty (50)~~] words, pertaining to the student's promise of continued academic achievement; and

4. A listing of honors, activities, and community service performed during high school.

(3)[~~; or~~

~~(b) For a~~] GED recipients[~~recipient(s)~~].

(a)[~~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 Application for GED Recipients form set forth in 11 KAR 4:080, Section 1(5)(b).

(b) The application shall be accompanied by the following supporting documentation pertaining to the eligible student:

1. An official General Education Development score certification; and

2. The GED coordinator's recommendation, not exceeding 150[~~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 cumulative grade point average as certified by the high school guidance counselor [~~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.

Section 6. Notification Procedures. The authority shall notify eligible students, tentatively selected as scholars, in writing of their status not later than ninety (90) [~~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 undergraduate 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) [~~1.~~] One-half (1/2) in the fall term; and

(b)[~~2.~~] One-half (1/2) in the spring term.[~~, or~~

~~(b) For quarter-hour institutions, one-third (1/3) each quarter.~~]

(3) The funds shall be disbursed by the authority to the educational institution for either subsequent delivery to the scholar or application of the funds to the account of the scholar. [~~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's 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 of enrollment beyond the twelve (12) month suspension is due to exceptional circumstances beyond the scholar's control or necessary for the scholar to meet a commitment.

DR. SARAH LAWS, Chair

APPROVED BY AGENCY: February 21, 2008

FILED WITH LRC: March 12, 2008 at 11 a.m.

CONTACT PERSON: Ms. Diana L. Barber, General Counsel, Kentucky Higher Education Assistance Authority, P.O. Box 798, Frankfort, Kentucky 40602-0798, phone (502) 696-7298, fax (502) 696-7293.

EDUCATION PROFESSIONAL STANDARDS BOARD
(As Amended at ARRS, June 10, 2008)

16 KAR 7:010. Kentucky Teacher Internship Program.

RELATES TO: KRS 156.101, 161.028, 161.030, 161.048, 161.095

STATUTORY AUTHORITY: KRS 161.028(1)(a), 161.030, [~~161.1222~~]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.030(5) requires that all new teachers and out-of-state teachers with less than two (2) years of successful teaching experience who are seeking initial certification in Kentucky shall serve a one (1) year internship. This administrative regulation establishes the requirements for the Kentucky Teacher Internship Program.

Section 1. Definitions. (1) "Confirmation of Employment" means the electronic document or a hardcopy of the same name that is submitted to the Education Professional Standards Board by the employing school district or nonpublic school to document employment of a teacher intern.

(2) "Half-time basis" means teaching fifteen (15) hours per week in the intern's area of certification.

(3)[~~(2)~~] "Instructional day" means a day that:

(a) The teacher intern is performing regular teaching responsibilities in an instructional setting, or is completing professional development for compensation from the district or employing school; and

(b) Does not include annual leave, sick leave, or other authorized or unauthorized leave time

(4)[~~(3)~~] "Resource Teacher Time Sheet" means [~~a copy of~~] the electronic document or a hardcopy of the same name that is submitted to the Education Professional Standards Board and is used by resource teachers to record in-class hours and, for compensation, resource teacher out-of-class hours. [~~contained on the Education Professional Standards Board (EPSB) Web site, www.kyepsb.net and in the publication, "Guiding and Assessing Teacher Effectiveness: A Resource Guide for Kentucky Teacher Internship Program Participants."~~]

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

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

(a)1. The teacher intern shall successfully complete a KTIP Teacher Performance Assessment.

2. The assessment shall be organized according to three cycles of the internship year and shall be a set of ten teaching tasks designed to provide interns the opportunity to demonstrate performance of the Kentucky Teacher Standards established by the Education Professional Standards Board in 16 KAR 1:010.

(b) The ten (10) teaching tasks shall be grouped into three (3) components as follows:

1. Component I: Classroom Teaching, **which shall include:**[~~:~~]

a. Task A: Develop a Lesson Plan;

b. Task B: Demonstrate Teaching Skills during Classroom

Observation; **and**

c. Task C: Analyze and Evaluate Teaching of a Lesson;

2. Component II Professional Responsibilities; **which shall include:**[-]

a. Task D: Collaborate to Address Special Learning Needs;

b. Task E: Assess and Manage Professional Growth; **and**

c. Task F: Demonstrate Professional Leadership; **and**

3. Component III: Instructional Unit; **which shall include:**[-]

a. Task G: Design Learning Objectives and Assessments for an Instructional Unit;

b. Task H: Design Instructional Strategies and Activities for the Instructional Unit;

c. Task I: Analyze, Use and Communicate Unit Learning Results; **and**

d. Task J: Reflect on and Evaluate Teaching and Learning in the Instructional Unit.

(2) In arriving at its professional judgment, the beginning teacher committee shall utilize the scoring rubrics contained within the KTIP Intern Performance Record, [~~incorporated by reference,~~] and take into consideration the progress of the teacher intern throughout the school year and, particularly, the level of performance that has been achieved near the end of the internship. The beginning teacher committee shall determine the progress and improvement of the teacher intern, pursuant to KRS 161.030, by:

(a) A systematic observation of classroom performance;

(b) An ongoing review of documented evidence developed by the teacher intern of progress toward demonstration of the applicable standards; and

(c) A review of the teacher intern's response to the suggestions and recommendations made by the beginning teacher committee during its meetings with the teacher intern throughout the internship.

(3) Throughout the internship, the teacher intern and the beginning teacher committee shall utilize the Kentucky[~~New~~] Teacher Standards [~~for Preparation and Certification~~] established by the Education Professional Standards Board in 16 KAR 1:010. Teacher Interns and their committees [~~utilizing the new Teacher Performance Assessment~~] shall use the indicators[~~benchmarks~~] for each standard as outlined in the KTIP Intern Performance Record[~~, incorporated by reference~~][~~Teacher Performance Assessment Handbook.~~]

~~(4) For interns and committees utilizing the new Teacher Performance Assessment, the intern shall demonstrate a Leadership Standard. Scoring for the Leadership Standard shall not apply to a determination of the intern's success or failure of the internship~~].

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

(b) The Kentucky Teacher Internship Program Committee training may be approved for up to twelve (12) hours of professional development credit toward the continuing education requirements for resource teachers pursuant to KRS 161.095 and Effective Instructional Leadership Act (EILA) credit for administrators pursuant to KRS 156.101.

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

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

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

(5) The teacher training institution shall appoint a teacher educator no later than thirty (30) days after being notified by the district or nonpublic school of the need for a teacher educator[~~October 1 for the fall semester and February 15 for the spring semester~~]. If the teacher intern is employed after the date required to submit the Confirmation of Employment in accordance with Section 4(3)(a) of this administrative regulation [~~for appointment of the teacher educator~~], the teacher training institution shall appoint a teacher educator no later than ten (10) days after being notified by the district or nonpublic school of the need for a teacher educator.

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

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

(b) The name of a qualified replacement submitted after consultation with the principal of the employing school and the[~~district or employing school~~] Kentucky Teacher Internship Program university and district coordinators **for that school district**[~~Coordinator~~].

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

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

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

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

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

(3)(a) The school district or nonpublic school shall complete and submit to the Education Professional Standards Board the Confirmation of Employment in electronic form or in hard copy if the electronic submission system is unavailable:

1. Within thirty (30) days from the date of hire or on or before October 15, whichever occurs first, for a teacher intern participating in the internship for the fall semester or full year; or

2. Within thirty (30) days from the date of hire or On or before February 15, whichever comes first, for a teacher intern participating in the internship for the spring semester.

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

(c) If the district or employing school fails to report verification of enrollment in the internship by the applicable date established in paragraph (a) or (b) of this subsection, and there is insufficient time remaining for the teacher intern to complete the number of days

required under subsection (1) of this section, the district or employing school shall declare an emergency as provided in KRS 161.100, and the teacher intern shall enroll in the internship in the next semester of employment when at least seventy (70) instructional days are available.

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

1. Be a violation of KRS 161.020; and

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

(4) A teacher intern may participate in the internship if the intern is teaching in the intern's area of certification on at least a half-time basis. A school district or nonpublic school offering employment to a new teacher for part-time services which do not conform to the definition of half-time basis shall request a waiver from the Education Professional Standards Board staff for the new teacher to participate in the Kentucky Teacher Internship Program. The waiver request shall detail how the part-time employment offered by the district or nonpublic school is commensurate with the half-time basis requirement of this administrative regulation.

(5)(a) Termination or resignation of the internship shall be prohibited unless a written resignation detailing the facts surrounding the resignation is received and approved by:

1. The superintendent or designated nonpublic school head or leader; and

2. The Education Professional Standards Board staff.

(b) A teacher intern who terminates or resigns the internship without the approval of the Education Professional Standards Board staff shall be recorded as unsuccessfully completing the internship for that school year.

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

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

(b) The student selection and placement process;

(c) The level of support for students and faculty provided by the district or nonpublic school;

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

(e) The location and facility that houses the school, classroom, or program[, classroom or school];

(f) The instructional resources available to the faculty;

(g) The curriculum used by the school, classroom, or program[, classroom or school];

(h) The manner in which the school, classroom, or program[, classroom or school] collaborates with other schools within the district;

(i) The current faculty and staff positions assigned to the school, classroom, or program[, classroom or school];

(j) A brief description of how a teacher intern placed in the alternative school, classroom, or program[, classroom or school] could demonstrate that the teacher intern has met all of the applicable standards;

(k) Contact information for an individual who could provide additional information about the request; and

(l) A signed affidavit by the superintendent, the superintendent's designee, or the designated nonpublic school head or leader confirming the information.

(7) The Education Professional Standards Board staff shall grant the waiver if there is a determination that the request and accompanying documentation sufficiently demonstrate that:

(a) The level of support and services provided to the teacher intern assigned to an alternative school, classroom, or program is equivalent to that provided to a teacher intern placed in a nonalternative setting; and

(b)[, and that] The intern assigned to the alternative school, classroom, or program shall be provided the opportunity to successfully demonstrate all Kentucky Teacher Standards.

(8) If the waiver is granted, it shall remain in effect for the duration of the internship.

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

(a)1. Make three (3) official observation visits to the teacher intern's classroom with each observation lasting one (1) hour in duration or one (1) class period; or

2. Make two (2) one (1) hour or one (1) class period observation visits followed by an observation of the teacher intern's one (1) hour or one (1) class period videotaped classroom lesson[lessons];

(b) Conduct a lesson plan review prior to each of the three (3) observations and a postobservation conference after each observation;

(c) Report progress observed and concerns to the committee at the scheduled committee meetings;

(d) Monitor the time that the resource teacher spends with the teacher intern both in and out of class and sign the electronic version of the resource teacher time sheets or the hard copy of the resource teacher time sheets if the electronic reporting system is unavailable; and

(e) Ensure that all program policies and procedures are followed.

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

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

(b) The resource teacher shall spend the required amount of[a minimum of twenty (20)] hours working with the teacher intern in the classroom setting as specified in KRS 161.030(7)[161.130]

1. As a portion of the [twenty (20)] hours, the resource teacher shall conduct:

a. Three (3) official observations with each observation lasting one (1) hour in duration or one (1) class period; or

b. Two (2) observations lasting one (1) hour in duration or one (1) class period followed by an observation of the teacher intern's one (1) hour or one (1) class period videotaped classroom lesson[lessons].

2. The observations shall be preceded by a preobservation conference and lesson plan review and shall be concluded with a pre-observation[postobservation] conference.

(c) Pursuant to the resource teacher requirements established in KRS 161 030(7), a resource teacher shall complete [at least fifty (50) hours of] out-of-class time identified in KRS 161.030 in consultation with the teacher intern to:

1. Assist the teacher intern in the development of the professional growth plan;

2. Assist the teacher intern in areas identified in the professional growth plan;

3. Assist the teacher intern with instructional activities such as planning, management techniques, assessment, and parent conferences;

4. Assist the intern in arranging to attend[Arrange activities for the teacher intern such as attendance at] seminars, conferences, or lectures offering educational assistance commensurate with the teacher intern's professional growth plan; [and]

5. Continually assess the teacher intern's progress in the internship in relation to each of the Kentucky Teacher Standards; and

6. Enter and submit data into the online Resource Teacher

Time Sheet or the hard copy of that document if the electronic reporting system is unavailable[new teacher standards; and

6. Enter and submit data into the online Resource Teacher Time Sheet or the hard copy of that document if the electronic reporting system is unavailable. This document is located within "Guiding and Assessing Teacher Effectiveness: A Resource Guide for Kentucky Teacher Internship Program Participants," incorporated by reference].

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

(3) The teacher intern shall:

(a) Complete all requirements of the Kentucky Teacher Internship Program as established in KRS 161.030 and this administrative regulation, including compliance with the Kentucky[new] Teacher Standards;

(b) Attend the orientation, pre-observation,[preobservation] and post-observation[postobservation] conferences with individual committee members, and all beginning teacher committee meetings;

(c) Participate with the resource teacher in [the fifty (50) hours of] consultation time to be spent outside of an instructional setting in the amount of time specified in KRS 161.030;

(d) Cooperate with the resource teacher in completing the [twenty (20) hours of] instructional observations[observation];

(e) Complete a professional growth plan (PGP);

(f) Prepare for three (3) official one (1) hour observations by each committee member during the internship[year], including submitting a written lesson plan to the observer in a timely fashion prior to each visit. Each observation shall be one (1) hour in duration or one (1) class period;

(g) Develop documentary evidence of progress toward demonstration of the applicable standards for presentation and review at committee meetings; and

(h) Review all electronic documents completed by the beginning teacher committee and affix an electronic signature if required. If the electronic version of a document[the documents] is[are] unavailable through the electronic reporting system, the teacher intern shall review and sign a hard copy version of the document[hard copy versions of these documents].

(4) The teacher educator shall:

(a)1. Make three (3) official observations of the teacher intern with each observation lasting one (1) hour in duration or one (1) class period; or

2. Make two (2) observations of one (1) hour in duration or one (1) class period, followed by an observation of the teacher intern's one (1) hour or one (1) class period videotaped classroom lesson[lessons];

(b) Conduct a lesson plan review prior to each of the three (3) observations and a post-observation conference after each observation; and

(c) Report progress observed and concerns to the committee at the scheduled committee meetings.

(5) Observations and committee meetings shall be scheduled in accordance with the following:

(a) The orientation meeting shall be held prior to the conduct of any formal classroom observations of the teacher intern;

(b) The classroom observations by all committee members shall occur prior to the corresponding committee meeting;

(c) The classroom observations and second committee meeting shall be held between one (1) and sixty (60) instructional days following the orientation meeting [and shall have been preceded by classroom observations by all committee members];

(d)[(c)] The classroom observations and third committee meeting shall be held between sixty-one (61) and 110 instructional days following the orientation meeting [and shall have been preceded by a second set of classroom observations by all committee members]; and

(e)[(d)] The taping and reviews of the video or classroom observations and fourth committee meeting shall be held between 111 and 140 instructional days following the orientation meeting [and shall have been preceded by a third set of classroom observations by all committee members].

(6) Committees formed during the spring semester shall establish a meeting schedule that observes the time sequences established in subsection (5) of this section for the full-year teacher interns but which shall span the spring and fall semesters of two (2) consecutive school years.

(7)(a) Classroom observations conducted by committee members shall be:

1. Of at least one (1) hour or one (1) class period in duration; and

2. In the classroom or at the work station of the teacher intern.

(b) Additional classroom observations may be conducted at the option of the committee.

(c) All classroom observations shall be scheduled in advance in order to provide adequate time for preparation by the teacher intern.

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

(9) At the orientation meeting of the beginning teacher committee, the following items shall be addressed:

(a) Expectations on the part of the teacher intern and each committee member;

(b) Procedures and materials for classroom observations;

(c) Use of classroom observation data in designing the teacher intern's professional growth plan;

(d) Requirements for the teacher intern for compiling documentary evidence of progress toward demonstration of the applicable standards;

(e) General schedule for the events to take place during the internship program; and

(f) Work of the resource teacher with the teacher intern.

(10)(a) The primary purpose of the second and third committee meetings shall be to provide the teacher intern with information based on classroom observations, review of the teacher intern's documented evidence of progress toward demonstration of the applicable standards, and reports of the resource teacher that shall support the growth of the teacher intern.

(b) The committee shall provide the teacher intern at the second, third, and fourth meetings with a consensus assessment of the teacher intern's progress in the internship in relation to each of the Kentucky Teacher Standards[new teacher standards].

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

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

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

Section 6. Decision by the Beginning Teacher Committee, Reporting, and Certification Actions.

(1)(a) The decision of the beginning teacher committee as to satisfactory completion of the internship for all full-year teacher interns shall be reported by the chair to the local school superintendent or other employer and to the Education Professional Standards Board by May 1 or no later than two (2) weeks following the final committee meeting, whichever occurs first.

(b) For [midyear] teacher interns completing the internship in December, the final report shall be submitted by December 15.

(c) If a teacher intern's performance is judged by the committee to be unsuccessful, the school district or employing school shall submit the following documentation to the Education Professional Standards Board by the [above-mentioned] deadlines established in paragraphs (a) and (b) of this subsection:

1. Record of Teacher Internship Year;

2. Resource Teacher Time Sheets;

3. All Teacher Performance Assessment documents **created in compliance with Section 2 of this administrative regulation;**

4. School Calendar;

5. Video if available; [and]

6. Any electronic communications **that relate to any aspect of the internship** sent to the teacher intern along with read receipts and responses back from the teacher intern if available; **and**

7. The KTIP Intern Performance Record or the KTIP IECE Intern Performance Record.

(d) All materials submitted **shall** become the property of the Education Professional Standards Board and shall not be returned to the teacher intern.

(2) Failure to meet the [above] deadlines **established in subsection (1) of this section** may warrant action against the District Superintendent's or employing school head or leader's certification.

~~(3)[The final report shall be accompanied by the resource teacher time sheets.~~

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

(4)[~~(3)~~](a) If the teacher intern is unable to complete the internship within one (1) school year in accordance with the requirements of Section 5 of this administrative regulation, an interim report shall be submitted to the EPSB through the electronic system, or by hard copy if the electronic system is unavailable within ten (10) days of the date the internship ceases.

(b) Under extraordinary circumstances and with the approval of the EPSB, the teacher intern may continue the internship during a subsequent school year if employed in a public or nonpublic accredited school. Extraordinary circumstances shall include:

1. Serious medical conditions;

2. Temporary disability; or

3. Military deployment.

(c) The provisions of Section **4(1)(b)**[4] of this administrative regulation shall not apply **if the EPSB approves the request for an exception based on extraordinary circumstances** in this situation.

Section 7. Payments to Committee Members. (1) [~~In accordance with the budgetary act,~~] The Education Professional Standards Board shall contract with the local school district, or make other appropriate arrangements, for the direct service of a resource teacher to each teacher intern [~~:~~

~~(a) The direct service of a resource teacher to each teacher intern;~~

~~(b) Participation in classroom observations and committee meetings; and~~

~~(c) The employment of substitute teachers to provide at least twenty (20) clock hours of released time for the resource teacher to observe and assist the teacher intern during normal working hours.~~]

(2) A resource teacher shall:

(a) Not serve as a resource teacher for more than one (1) teacher intern concurrently; and

(b) Be paid a stipend in accordance with subsection (3) of this section.

(3)(a) Contingent upon funding, the Education Professional Standards Board shall provide a stipend in an amount not to exceed $1,400 to each resource teacher as compensation for out-of-class time spent with the teacher intern.

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

(c) The stipend shall be[~~Except as provided by paragraphs (b) and (c) of this subsection, the stipend shall be:~~

~~1. $1,400 for a year of service, and~~

~~2.~~] Disbursed in accordance with KRS 161.030(6)(f) on a biannual basis corresponding to the semester in which the mentoring occurred or on an annual basis for full-year interns with payment being disbursed at the end of the one (1) year internship.

1.[~~a.~~] The frequency of the disbursement shall be at the option of the district if the resource teacher is serving in a public school district.

2.[~~b.~~] If the resource teacher is serving in a nonpublic school, the frequency of the disbursement shall be determined by the submission of the resource teacher time sheets.

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

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

~~Section 8. Use of the New Teacher Performance Assessment by Internship Participants. (1) Beginning with the 2006-07 school year, and for full-year interns beginning the Fall of 2007, a school or district may require all interns employed to use the new Teacher Performance Assessment in lieu of the traditional internship assessments contained within "Guiding and Assessing Teacher Effectiveness: A Resource Guide for Kentucky Teacher Internship Program Participants."~~

~~(2) Beginning January 1, 2008, all school districts and all nonpublic schools participating in the Kentucky Teacher Internship Program shall use the new Teacher Performance Assessment with all interns beginning their internship in lieu of the traditional internship assessments contained within "Guiding and Assessing Teacher Effectiveness: A Resource Guide for Kentucky Teacher Internship Program Participants."~~

~~(3) Prior to serving as a member of the beginning teacher committee for a teacher intern using the new Teacher Performance Assessment, the principal, resource teacher, and teacher educator each shall have completed the new Teacher Performance Assessment internship committee training.~~

~~(4) During the year of the internship using the new Teacher Performance Assessment, the teacher intern and the beginning teacher committee shall utilize the Kentucky Internship Program scoring rubrics and forms contained within the Kentucky Teacher Internship Program Teacher Performance Assessment Handbook, incorporated by reference.~~

~~(5) To the extent that they do not conflict with this section, all other provisions of this administrative regulation shall apply to the intern using the new Teacher Performance Assessment.~~

~~(6) Participation in the Kentucky Teacher Internship Program using the new Teacher Performance Assessment shall not alter any rights ordinarily afforded to teacher interns or employing schools or school districts under the Kentucky Teacher Internship Program. Use of the new Teacher Performance Assessment shall not form a basis for appeal of a teacher intern's failure of the Kentucky Teacher Internship Program.~~]

Section **8**[~~9.~~] Appeals. (1)(a) **If**[When] a Beginning Teacher Committee finds that a teacher intern was unsuccessful, the Education Professional Standards Board shall notify the teacher intern by certified mail **to the last known address of the teacher intern**.

(b) **To appeal the decision,** the teacher intern shall file a written notice of appeal within thirty (30) calendar days of the date the written notice of finding of unsuccessful completion of the internship is received by the teacher intern. If the teacher intern fails to maintain a current address with the Education Professional Standards Board or refuses to claim the certified mail the teacher intern shall file a written notice of appeal within thirty-five (35) days of the date the notice is mailed to the teacher intern's last known address.

(c) If a written notice of appeal is not received within the [above] timeline **established in paragraph (b) of this subsection,** the Beginning Teacher Committee's decision shall be final.

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

1. One (1) teacher;

2. One (1) principal;

3. One (1) teacher educator; and

4. The Executive Director of the Educational Professional Standards Board, or his or her designee.

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

(c) An appeals committee member shall not take part in a decision in which the member has an interest or is biased.[Appeals by teacher interns shall be reviewed by a committee of four (4) persons. The appeals committee shall include:

1. One (1) teacher;

2. One (1) principal;

3. One (1) teacher educator; and

4. The Executive Director of the Education Professional Standards Board, or his or her designee.

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

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

(2)(a) The teacher intern shall file the appeal within thirty (30) calendar days of the date the written notice of failure of the internship is received by the teacher intern by certified mail return receipt requested. If the teacher intern fails to maintain a current address with the Education Professional Standards Board or refuses to claim the certified mail, the appeal shall be filed within thirty-five (35) days of the date the notice is mailed to the teacher intern's last known address.

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

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

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

1. Evidence of the teacher intern's ability to meet the requirements of the Kentucky Teacher Standards[new teacher standards];

2. Appropriate documentation of [at least twenty (20) hours in] the instructional setting and [fifty (50) hours] outside normal working hours spent by the resource teacher in assisting the teacher intern as specified in KRS 161.030(7)[161.130];

3. Assignment of beginning teacher committee members in accordance with legal requirements;

4. Compliance with the requirements for the timing, content, reporting, and signing of teacher intern performance records, meeting and observation forms, and resource teacher time sheets; and

5. Agreement between teacher intern performance records, professional growth plans, beginning teacher committee meeting reports, the teacher performance assessment, and the final decision of the committee.

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

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

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

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

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

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

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

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

Section 9 [10.] A teacher intern who has not successfully completed the internship and has exhausted the two (2) year provision for participation in the Kentucky Teacher Internship Program shall not be eligible for a Kentucky teaching certificate under this administrative regulation.

Section 10. A teacher[11. An] intern serving the internship in Interdisciplinary Early Childhood Education (IECE) shall successfully demonstrate the Kentucky Teacher Standards[new teacher standards] as adapted to the IECE standards and shall utilize the KTIP IECE Intern Performance Record[Observation - Instrument][incorporated by reference]

Section 11.[12.] Incorporation by Reference. (1) The following material is incorporated by reference:

(a) Confirmation of Employment, November 2004;

(b) KTIP Intern Performance Record, March 2008

(c) KTIP IECE Intern Performance Record, March 2008;

(d) Record of Teacher Internship Year, March 2008; and

(e) Resource Teacher Time Sheet, March 2008 ["Guiding and Assessing Teacher Effectiveness: A Resource Guide for Kentucky Teacher Internship Program Participants," March 2005 edition;

(b) "Statement of Eligibility/Confirmation of Employment form," revised November 2004;

(c) "Kentucky Teacher Internship Program Teacher Performance Assessment Handbook", June 2006 edition;

(d) KTIP TPA Intern Performance Record, June 2006 edition; and

(e) "IECE Observation Instrument", January 2005 edition.]

(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.

DR. JAMES G. CIBULKA, Chairperson

APPROVED BY AGENCY: April 9, 2008

FILED WITH LRC: April 10, 2008 at 1 p.m.

CONTACT PERSON: Alicia A. Sneed, Director of Legal Services, Education Professional Standards Board, 100 Airport Road, Third Floor, Frankfort, Kentucky 40601, phone (502) 564-4606, fax (502) 564-7080.

PERSONNEL CABINET
(As Amended at ARRS, June 10, 2008)

101 KAR 2:221. Employee Educational Assistance Program.

RELATES TO: KRS 18A.110(7)(i),164.357

STATUTORY AUTHORITY: KRS 18A.030(2) and 18A.110(7)(i)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 18A.110(7)(i) requires the Secretary of the Personnel Cabinet to promulgate administrative regulations which govern the development and operation of programs to improve the work effectiveness of employees in the state service, including training, health, welfare, counseling and employee relations. This administrative regulation establishes the requirements for employee participation in and the agency reporting obligations relating to the Employee Educational Assistance Program to ensure that agencies are maintaining and reporting required usage data.

Section 1. Definitions. (1) "Educational assistance" means the financial assistance provided to an employee by the employee's cabinet or agency for the purpose of continuing the employee's education or training, based on the educational needs of the workforce, which results in an improved workforce and assists the employee in the achievement of individual career goals.

(2) ~~["Employee Educational Assistance Program" means the program described by 101 KAR 2:221 and adopted by the Governmental Services Center (GSC) which establishes and sets forth the terms and conditions of the Employee Educational Assistance Program~~

~~(3)~~] "Educational providers" means accredited public or private degree-granting postsecondary education institutions, educational television, accredited correspondence or online schools, secondary schools, General Educational Development (GED) preparatory programs, Kentucky Virtual Campus (KYVC), or other approved education or training providers.

(3) "Employee Educational Assistance Program" means the program established by this administrative regulation.

(4) "Satisfactory Grade" means:

(a) a grade of "C" or higher for undergraduate or law school courses;

(b) a grade of "B" or higher for graduate-level or other professional studies courses; or

(c) "Pass" for courses which are graded on a "Pass/Fail" basis.

(5) "Service obligation" means the six (6) month minimum period of time that an employee is obligated to work in state government following the receipt of educational assistance, beginning:

(a)**1.** On the educational provider's published end date of the academic term in which the employee is receiving educational assistance; or

2.[~~(b)~~] If no published end date exists, on the date of the last class activity, such as the final exam, the date a final paper is submitted, or the last scheduled class session; and

(b) If[~~provided~~] the employee has achieved a satisfactory grade on the current coursework.

(6) "Special-Purpose Educational Assistance Program" means coursework or specified training that has been predetermined by a cabinet or agency to be mandatory or job related that is required to meet accreditation, or certification or professional standards.

Section 2. Employee Educational Assistance Program. (1) The Governmental Services Center (GSC) shall be responsible for issuing, administering, and monitoring the Employee Educational Assistance Program.

(2) A cabinet or agency may adopt an Educational Assistance Policy to specify the terms and conditions of the agency or cabinet's participation in the **Employee** Educational Assistance Program.

(a) A cabinet or agency's education assistance policy shall not conflict with the employee educational assistance program.

(b) A cabinet or agency's educational assistance policy shall be subject to the approval of the Executive Director of GSC or the Executive Director's designated agent.

(c) A copy of the cabinet or agency's current educational assistance policy shall be filed with the GSC upon approval by the Executive Director of GSC or the Executive Director's designated agent.

(d) A cabinet or agency shall utilize **this administrative regulation** [~~101 KAR 2:221~~] if no other Educational assistance policy is filed with the GSC for that cabinet or agency.

(3) Eligibility requirements.

(a) **A permanent, full-time classified employee**[~~The following employees~~] shall be eligible for the Employee **Educational**[~~Education~~] Assistance Program **if the employee**[~~permanent, full-time classified employees who~~]:

1. **Is**[~~Are~~] in full-time active work status; and

2. **Has**[~~Have~~] satisfactorily completed the initial probationary period.

(b) **The requirements established in paragraph (a) of this subsection**[~~These requirements~~] may be waived by a cabinet or agency on an individual basis **if**[~~when~~] the nature of the work justifies providing educational assistance.

1. If a cabinet or agency waives any requirement for an employee, the agency shall maintain justification documentation.

2. Documentation shall include:

a. The employee's application for educational assistance;

b. The specific education or training requested; and

c. The written determination by the cabinet or agency that waiver of one or more requirements is justified based on the nature of the employee's work.

3. Documentation shall be maintained in the cabinet or agency's Educational Assistance Policy file and made available during periodic audits conducted by the GSC.

4. An employee who has an outstanding reimbursement obligation **in accordance with subsection (8) of this section** shall not receive further educational assistance until the outstanding obligation is satisfied.

5. The cabinet's or agency's Education Assistance Policy shall not apply to programs providing scholarships or other educational assistance to individuals who are not qualifying employees of the executive branch of Kentucky state government.

(4) Employee Educational Assistance Program.

(a) Funding.

1. Funding for educational assistance shall come from a cabinet or agency's budget.

2. Cabinet or agency participation in the Employee Educational Assistance Program **shall be**[~~is~~] based on the availability of cabinet or agency funds.

(b) Approved educational assistance funds.

1. Educational assistance **shall**[~~may~~] be granted to pay for tuition and other related expenses, such as:

a. Laboratory fees;

b. Basic and normal costs charged by the institution for course registration;

c. Computer usage fees;

d. Required texts and other required course supplies;

e. Examination fees; or

f. Records and transcript fees required by the institution.

2. Educational assistance may be granted for educational testing for credit, such as General Educational Development (GED), College Level Examination Program (CLEP), **or**[~~and~~] Defense Activity for Non-Traditional Education Support (DANTES).

3. Educational assistance **shall**[~~may~~] be available for educational testing which is an entry requirement by an educational provider, such as ACT, SAT, GRE, GMAT, or LSAT.

4. A cabinet or agency may elect to cover additional or other types of educational expenses.

a. Additional or other types of educational expenses by a cabinet or agency shall not require pre-approval from the GSC.

b. Documentation of a cabinet or agency's approval of expenses shall be maintained in the cabinet or agency's Educational Assistance Policy file and made available during periodic audits conducted by the GSC.

(c) Limits of funding.

1. Educational assistance provided for coursework at an accredited in-state private college, out-of-state college, or out-of-state university shall be limited by the then-current costs at the four (4) year state university located in Kentucky nearest to the employee's county of employment.

a. The educational assistance provided per semester hour of credit shall not exceed the then-current cost per semester hour at the four (4) year state university located in Kentucky nearest the employee's county of employment.

b. [~~The~~]Educational assistance [~~provided when~~] based on

semester quarter-hours of credit shall not exceed two-thirds (2/3) of the then-current cost per semester hour at the four (4) year state university located in Kentucky nearest the employee's county of employment.

2. Educational assistance provided per semester hour of credit for an online course or program shall be limited to the higher of:

a. The then-current costs per semester hour for an online course or program offered by a Kentucky public post-secondary educational institution which is delivered directly by that institution; or

b. The then-current costs per semester hour for an online course or program offered by a Kentucky public postsecondary educational institution which is delivered through **the Kentucky Virtual Campus (KYVC)**[~~KYVC~~].

3. Educational assistance [~~provided when~~] based on semester quarter-hours of credit for an online course or program shall not exceed two-thirds (2/3) of the higher of:

a. The then-current costs per semester hour for an online course or program offered by a Kentucky public postsecondary educational institution which is delivered directly by that institution; or

b. The then-current costs per semester hour for an online course or program offered by a Kentucky public postsecondary educational institution which is delivered through KYVC.

4. Each cabinet or agency shall verify that the selected university or college has:

a. Conducted regular assessments to accredit each academic, academic support, and nonacademic programs;

b. Assessment results which substantiate that the academic activities are aligned with institutional mission and goals; and

c. Provided information specifying the source of the accreditation information on the **Employee Educational Assistance Program**[~~Education Assistance Request~~] Form.

(5) Payments of funds to educational providers.

(a) The cabinet or agency shall pay educational assistance funds directly to the educational provider if:

1. The employee's application for educational assistance was timely filed;

2. **The application**[~~it~~] meets cabinet or agency approval; and

3. **A** GSC exception request is approved if necessary.

(b) Financial assistance from any other financial aid program shall not be duplicated under this program.

1. If eligible for tuition waiver or student fee waiver, the employee **shall apply for**[~~must apply~~] these programs first.

2. **If additional allowable costs remain after the utilization of the Tuition Waiver or Student Fee Waiver, the employee may seek additional funding from the educational assistance program to cover those remaining costs**[~~Educational Assistance Program may seek reimbursement if additional allowable costs remain after the utilization of the tuition waiver or student fee waiver~~].

(6) Approved courses.

(a) Each course, program, or degree for which educational assistance is provided shall have a clear and direct relationship to:

1. The work of the cabinet or agency;

2. Improving the employee's effectiveness in his or her present position;

3. Preparing the employee for a position to which the employee can reasonably aspire; or

4. [~~Must be~~] A requirement for a degree or program on the cabinet or agency's approved list of courses, programs, and degrees.

(b) Approved Lists of courses, programs and degrees

1. A cabinet or agency shall establish approved lists of courses, programs, and degrees for which educational assistance may be granted.

a. A cabinet or agency's approved list of courses, programs and degrees shall be based on the recognized educational needs of the workforce in the agency.

b. A cabinet or agency may establish different approved lists for work units or job classifications.

c. A cabinet or agency may grant educational assistance for courses that **do**[~~may~~] not qualify an individual to meet the minimum requirements for a job outlined on the official class specification.

2. Each approved list shall be made available for review by cabinet or agency employees.

3. A copy of a cabinet or agency's current approved list shall be provided to the GSC.

4. The cabinet or agency shall periodically review the approved list and make revisions as necessary and appropriate.

5. **A request**[~~Request(s)~~] by an employee for **an** exception or addition to the approved list shall be made in writing to the cabinet or agency's designated agent.

(c) Courses taken through the Employee Educational Assistance Program shall not be applied toward an Educational Achievement Award.

(7) Maximum courses allowed.

(a) Educational assistance provided for undergraduate and post-graduate studies shall not exceed the following:

1. For undergraduate studies, a maximum of eight (8) courses per year, with a limit of:

a. Three (3) courses in any regular semester session;

b. Two (2) courses in any regular quarter session; and

c. One (1) course in any summer session or inter-session**; and**[~~;~~]

2. For post-graduate studies (including graduate level professional studies), a maximum of six (6) courses per year, with a limit of:

a. Two (2) courses in any regular semester session;

b. One (1) course in any regular quarter session; and

c. One (1) course in any summer session or inter-session.

(b) An appointing authority or designated agent may make an exception to the maximum course load if:

1. The exception is necessary for an employee to complete the approved program; and

2. The exception will not adversely affect the cabinet or agency's service or the employee's performance.

(c) Documentation of a cabinet or agency's exception to the maximum course load shall be maintained in the cabinet or agency's Educational Assistance Program file and made available during periodic audits conducted by the GSC.

(8) Kentucky State University Requirement pursuant to KRS 164 357.

(a) The following employees shall receive educational assistance only for classroom, online or independent study courses at Kentucky State University (KSU), unless the course, program or degree required is not available or offered at KSU:

1. Employees who live in Franklin County or an adjoining county; or

2. Employees whose work station is in Franklin County or an adjoining county.

(b) This KSU requirement shall apply uniformly unless the Executive Director of the GSC or designee waives the requirement for a particular employee or course by written approval to an exception request.

(9) Employee obligations

(a) **To be eligible for educational assistance funds or to continue to receive those funds, the employee shall:**

1. Sign the Employee Educational Assistance Program Form;

2. Continue to work on a full-time basis;

3. Provide the agency, within thirty (30) calendar days upon completion of a course, evidence of a satisfactory grade; and

4. Complete the minimum six (6) month service obligation.

The employee shall be required at a minimum to comply with requirements established in this paragraph in order to qualify for and maintain educational assistance funds:

1. The employee shall continue to work on a full-time basis;

2. The employee shall sign the Employee Educational Assistance

3. Program Form and comply with the terms of the form;

4. The employee shall provide the agency within thirty (30) calendar days upon completion of a course evidence of a Satisfactory Grade; and

5. The employee shall complete the minimum six (6) month

service obligation.

(b) A cabinet or agency shall recover from an employee the full amount of educational assistance funds expended on that employee's behalf if:

1. The employee's application form contains any material falsification;

2. The employee fails to provide the agency, within thirty (30) calendar days upon completion of a course, evidence of a satisfactory grade;

3. The employee drops a course, regardless of cause, without prior approval of the appointing authority or designated agent; or

4. The employee receives duplicate payment for the same course from any other source, such as a scholarship, Veteran's Educational Payments, or an Educational Achievement Award.

(c) A cabinet or agency shall recover from an employee the educational assistance funds expended on that employee's behalf if the employee resigns, retires or is dismissed for cause prior to completion of the six (6) month minimum service obligation.

1. Any amount of educational assistance funds a cabinet or agency seeks to recover pursuant to an employee's failure to complete the six (6) month minimum service obligation shall be prorated according to
the portion of the service obligation the employee has fulfilled.

2. The six (6) month minimum service obligation shall not apply to an employee who is laid-off.

(d) If an employee for whom a cabinet or agency has paid educational assistance transfers from one cabinet or agency to another through the Internal Mobility Program while enrolled in the course or prior to completion of the employee's six (6) month minimum service obligation, the employee shall not be required to repay educational assistance funds, unless previously agreed to by other contract.

~~[1. A cabinet or agency may seek exception and petition to recover Educational assistance funds expended on behalf of an employee who has transferred from one cabinet or agency to another through the Internal Mobility Program while enrolled in the course or prior to completion of the employee's six (6) month minimum service obligation.~~

~~2. A cabinet or agency's petition shall be forwarded to the Executive Director of the GSC or designated agent and include the reasons why the
exception is justified.~~

~~3. If the exception is granted by the Executive Director of the GSC or designated agent, any amount to be recovered shall be pro-rated according to the portion of the employee's six (6) month minimum service obligation the employee has fulfilled as of the effective date of the transfer.~~]

(e) An approved course should be taken on the employee's own time. If a course is only offered only during working hours, eligible employees must request an Exception for Benefit of the Public Interest as set forth in Section 4.

(10) Records and Forms.

(a) The cabinet or agency shall maintain complete and accurate records relating to its Employee Educational Assistance Program and Special-Purpose Educational Assistance Program if applicable.

(b) A cabinet or agency's appointing authority or designated agent shall be responsible for maintenance and accuracy of all records relating to a cabinet or agency's Employee Educational Assistance Program or Special-Purpose Educational Assistance Program.

(c) A cabinet or agency shall utilize the Employee Educational Assistance Authorization Form as the key record for the Employee Educational Assistance Program.

(d) A cabinet or agency's Educational Assistance Policy or Special-Purpose Educational Assistance Program records shall be made available for GSC periodic audits or upon request.

(e) The cabinet or agency shall maintain all records and forms associated with this program in the agency personnel file of the employee and shall forward the
records to the receiving cabinet or agency if the employee transfers.

(f) Administration in the GSC **shall be**[is] responsible for retaining comprehensive statewide records, on a fiscal year basis, of Educational Assistance Program activity.

1. This information shall be reported annually to the Secretary of the Personnel Cabinet or as needed upon request and shall include the following:

a. **The number of**[~~Number~~] employees participating in the program;[,]

b. **The** amount (tuition and fees) reimbursed;

c. **The number of** [~~Number~~] employees granted educational leave;

d. **The number of**[~~Number~~] employees taking courses at **each** cabinet's or agency's request;

e. **The** number of employees taking courses for required certification; and

f. A summary of the annual reporting data **required by Section 5(3)(a) through (h) of this administrative regulation**[~~described in Section 5(3)(a)-(h)~~].

2. GSC **may**[~~shall~~] request additional information from cabinets or agencies as needed **to assist in the administration or monitoring of the program**.

Section 3. Special-Purpose Educational Assistance Program. (1) A cabinet or agency may create a Special-Purpose Educational Assistance Program which provides educational assistance for an employee to obtain a specific degree or certification that is in the interest of the cabinet or agency.

(2) A cabinet or agency and employee may set different terms and obligations other than those established in the Educational Assistance Program.

(a) A Special-Purpose Educational Assistance Program may grant the employee the opportunity to use paid work hours to attend class or to complete coursework.

(b) A cabinet or agency shall not waive the proration requirement for recovery of educational assistance funds if **the**[~~an~~] employee fails to complete the six (6) month minimum service obligation.

(3) Approval of a cabinet or agency's Special-Purpose Educational Assistance Program shall be subject to the written approval of the Executive Director of the GSC or designee.

Section 4. Exceptions for Benefit of the Public Interest. (1) The Executive Director of the GSC or designee may grant exception upon request by the cabinet or agency to any portion of the Educational Assistance Program in which the power of exception is not expressly granted to the cabinet or agency.

(2) A request for exception from the cabinet or agency shall, at a minimum, meet the following guidelines and include the following information:

(a) The request from the cabinet or agency's appointing authority or designated agent shall be in writing;

(b) The request shall include the completed **Employee** Educational Assistance Authorization Form from the cabinet or agency's appointing authority or designated agent; **and**

(c) The request shall include the specific nature of the exception, the reason for the exception, and an explanation as to why the exception would be in the cabinet or agency's interest or in the **public's**[~~public~~] interest.

(3) The request for exception shall be mailed or **sent electronically by email**[~~electronic mailed~~] to the Executive Director of the GSC.

(4) **A request** [~~Requests~~] for exception **shall**[~~must~~] be received by the GSC:

(a) Prior to the start of the educational course for which the exception is requested; or

(b) Prior to the date by which the cabinet or agency seeks to take any action subject to the exception requested.

(5) An agency **shall not be**[~~is not~~] required to file requests for exception **if**[~~when~~] proposing a Special- Purpose Educational Assistance Program for approval by the GSC.

(a) Upon the approval of a cabinet or agency's Special-Purpose Educational Assistance Program, any exceptions contained within the Special-Purpose **Educational Assistance** Program[,] which establish terms and obligations different than those terms and obligations established in the Employee Educational Assistance Program, **shall be**[~~are~~] deemed approved.

(b) Exceptions within a cabinet or agency's Special-Purpose Educational Assistance Program shall be approved for the remainder of the respective fiscal year.

Section 5. Program Audits. (1) The GSC shall conduct annual audits of cabinet or agency compliance with the Employee Educational Assistance Program from a representative sample selected by GSC.

(2) In the course of the audits, the GSC shall review a cabinet or agency's Educational Assistance Program and Special-Purpose Educational Assistance Program documents and records.

(3) Cabinets and agencies shall maintain the following data and reports in the cabinet or **agency's**[~~agency~~] Educational Assistance Program and Special-Purpose Educational Assistance Program file:

(a) Total dollar expenditures for educational assistance;

(b) Total number of employees utilizing educational assistance provided by the agency;

(c) Total dollar expenditures by educational provider by the cabinet or agency;

(d) Approved Lists of course titles, degrees, or programs;

(e) A list of all course titles, degrees, programs, certification or Special-Purpose Educational Assistance Program for which educational assistance is provided on a fiscal year basis;

(f) **The completed Employee**[~~Completed~~] Educational Assistance Authorization Form**, which is** required for approval provided to the GSC if an exception to the Employee Educational Assistance Program is requested or required;

(g) A list of all outstanding reimbursement obligations; and

(h) A list of all employees that have completed degree requirements during the current **fiscal** year.

Section 6. Equal Opportunity. [~~(1) All decisions regarding educational assistance shall be made without regard to race, color, religion, national origin, gender, disability, or age.~~

~~(2)~~] Each participating cabinet or agency shall ensure that its Employee Educational Assistance Policy is administered fairly, consistently, and equitably for all employees.

Section 7. Incorporation by Reference. (1) **"Employee Educational Assistance Program Form", June 2008, is incorporated by reference**[~~"Employee Educational Assistance Authorization Form" is incorporated by reference~~].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Personnel Cabinet, 501 High Street, 3rd Floor, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

NIKKI R. JACKSON, Secretary

APPROVED BY AGENCY: April 14, 2008

FILED WITH LRC: April 14, 2008 at 3 p.m.

CONTACT PERSON: Daniel F. Egbers, Office of Legal Services, 501 High Street, 3rd Floor, Frankfort, Kentucky 40601, phone (502) 564-7430, fax (502) 564-0224.

COMMERCE CABINET
Department of Fish and Wildlife Resources
(As Amended at ARRS, June 10, 2008)

301 KAR 1:130. Live bait for personal use.

RELATES TO: KRS 150.010, 150.170, 150.175, 150.340, 150.450, 150.990

STATUTORY AUTHORITY: KRS 150.025

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025 authorizes the department to promulgate administrative regulations to regulate creel and possession limits of fish, including the size or types of devices used for taking fish and the places where the taking of fish is permitted [~~establishing the procedures for taking fish and creel and the areas from where fish and creel may be taken~~]. This administrative regulation establishes the procedures for the taking of live bait for [~~and restricts use to~~] personal use.

Section 1. Definitions (1) "Live bait" means minnows, shad, herring, crayfish, salamanders, frogs except bullfrogs, tadpoles, native lampreys, Asiatic clams, [~~(Corbicula sp.)~~] and aquatic organisms except mussels.

(2) "Minnows" means fishes under six (6) inches in length, except blackside dace, palezone shiner, relict darter, duskytail darter, largemouth bass, smallmouth bass, Kentucky bass, redear sunfish [~~basses (largemouth, small mouth or Kentucky)~~], rock bass [~~or goggle-eye~~], trout, crappie, walleye, sauger, pikes, white bass, yellow bass, striped bass, [~~rockfish (saltwater striped bass)~~] and muskellunge, or any hybrids of the above.

(3) "Sport fisherman" is defined in 301 KAR 1:410(6).

Section 2. Live bait shall be taken with the following gear for personal use. Other species except live bait taken with this gear shall be returned immediately to the water:

(1) Seine[~~Seines~~]:

(a) Maximum size shall be ten (10) feet long, four (4) feet deep, one-fourth (1/4) inch bar mesh, **with** taking permitted statewide; **and**

(b) Maximum size shall be thirty (30) feet long, six (6) feet deep, one-fourth (1/4) inch bar mesh, **with** taking permitted in Ohio and Mississippi Rivers and Kentucky and Barkley lakes.

(2) Minnow trap[~~traps~~]: Maximum size shall be three (3) feet long, eighteen (18) inches in diameter, one (1) inch openings for catching, **with** taking permitted statewide.

(3) Dip net[~~nets~~]: Maximum size shall be three (3) feet in diameter, **with** taking permitted in Ohio, Tennessee, and Mississippi Rivers;[~~,~~] Cumberland River below Barkley Dam;[~~,~~] Kentucky River below Lock #14;[~~,~~] and all lakes over 1,000 acres.

(4) Sport cast net[~~nets~~]: The maximum size shall be twenty (20) feet in diameter, one (1) inch bar mesh, **with** taking permitted statewide except for [~~the following waters~~]:

(a) Streams stocked with trout, **which**[~~These~~] include statewide streams, national forest streams, seasonal catch and release streams, and the Fort Campbell and Fort Knox military reservations that are cited in the ["]List of Streams Stocked with Trout, 2008[~~", that is incorporated by reference in this administrative regulation~~][~~Trout streams and tailwaters listed in the current Kentucky Department of Fish and Wildlife's Fishing and Boating Guide~~];

(b) Lakes with a surface area of less than 500 acres; and

(c) [~~Taking shall be permitted in~~] Crocus and Marrowbone Creeks, Cumberland County[~~, but the mesh size shall be in one (1) inch bar mesh~~].

1. Crocus Creek shall be closed to cast nets for an area extending from its mouth to fifty (50) yards upstream.

2. All other tributaries of the Cumberland River below Wolf Creek Dam to the Tennessee state line shall be closed to cast nets.

Section 3. **Bait. (1) Mussels shall not**[~~No mussel~~][~~mussels~~] [~~shall~~] be taken for use as bait except Asiatic clams [~~(Corbicula sp.)~~].

(2) A sport fisherman shall fisherman shall not possess bait in amounts greater than those listed in each category below [~~have in his possession no more than~~]:

(a)[~~(1)~~] 500 minnows;

(b)[~~(2)~~] 500 crayfish;

(c)[~~(3)~~] Twenty-five (25) dusky salamanders [~~(spring lizards)~~] of the genus Desmognathus;

(d)[~~(4)~~] Five (5) frogs (other than bullfrogs);

(e)[~~(5)~~] Five (5) tadpoles;

(f)[~~(6)~~] 100 native lampreys [~~(mud eels)~~];

(g)[~~(7)~~] 500 aquatic invertebrates other than mussels;

(h)[~~(8)~~] 500 shad; **and**

(i)[~~(9)~~] 500 herring[~~;~~]

~~(10) Any number of Asiatic clams (Corbicula sp.)~~].

Section 4. Material Incorporated by Reference. (1) **"List of Streams Stocked with Trout, 2008", is incorporated by reference**[~~Kentucky Department of Fish and Wildlife Resources Fishing and Boating Guide, 2004 edition, 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[~~Game Farm Road~~], Frankfort, Kentucky, between the hours of 8 a.m. and 4:30 p.m. Eastern time.

MARK S. CRAMER, Deputy Commissioner
For Dr. Jonathan Gassett, Commissioner
MARCHETA SPARROW, Secretary
APPROVED BY AGENCY: March 7, 2008
FILED WITH LRC: April 2, 2008 at 3 p.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) 564-9136.

COMMERCE CABINET
Department of Fish and Wildlife Resources
(As Amended at ARRS, June 10, 2008)

301 KAR 2:049. Small game and furbearer hunting and trapping on public areas.

RELATES TO: KRS 150.010, 150.370[~~(1)~~], 150.399, 150.400, 150.410, [~~150.620,~~] 150.990
STATUTORY AUTHORITY: KRS 150.025[~~(1)~~], 150.620
NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025[~~(1)~~] authorizes the department to establish seasons, limits and other requirements for hunting, and to make these requirements apply statewide or to a limited area. KRS 150.620 authorizes the department to promulgate administrative regulations for the maintenance and operation of the lands it has acquired for public recreation. This administrative regulation establishes exceptions on Wildlife Management Areas to statewide small game and furbearer hunting and trapping.

Section 1. The provisions of 301 KAR 2:122, 301 KAR 2 251, and 301 KAR 3.010 shall apply on a Wildlife Management Area unless specified otherwise by this administrative regulation.

Section 2. On a Wildlife Management Area owned or managed by the department:
(1) A person shall wear hunter orange as specified in 301 KAR 2:172[~~, Section 12,~~] when a firearm is allowed for deer hunting.
(2) The hunter orange requirement in subsection (1) of this section shall not apply to a person hunting:
(a) Waterfowl; or
(b) Raccoon or opossum at night.
(3) Free youth week. For seven (7) consecutive days beginning on the Saturday after Christmas, a youth may take small game without a hunting license. Statewide requirements and bag limits apply.
(4) Free youth trapping week. For seven (7) consecutive days beginning on the Saturday after Christmas, a youth may trap without a hunting license or permit. Statewide requirements and bag limits apply.

Section 3. Exceptions on Specific Wildlife Management Areas. (1) Barren River Wildlife Management Area.
(a) Northern bobwhite[~~Quail~~] and rabbit: closed after December 31. Barren River WMA shall be considered to be entirely within the Eastern Northern bobwhite[~~Quail~~] Zone.
(b) On the Peninsula Unit, including Narrows, Goose and Grass Islands, a person shall not:
1. Hunt with a breech-loading firearm;
2. Except as authorized by the department, carry a breech-loading firearm with ammunition in the chamber or magazine.
(2) Beaver Creek Wildlife Management Area, including private inholdings.
(a) Grouse: October 1 through December 31.
(b) Northern bobwhite[~~Quail~~] and rabbit: closed after December 31.
[~~(c) Furbearer: December 5 through December 31.~~]
(3) Big South Fork National River and Recreation Area, McCreary County.
(a) Grouse: October 1 through December 31.
(b) Northern bobwhite[~~Quail~~] and rabbit: closed after December 31.
[~~(4) Boatwright Wildlife Management Area, Peal Tract.~~
~~(a) Furbearer hunting: twenty (20) day season beginning the day after the modern gun deer season.~~
~~(b) Furbearer trapping: December 1 through 10, water sets only.~~]
(4)[~~(5)~~] Cane Creek Wildlife Management Area, including private inholdings.
(a) Grouse: October 1 through December 31.
(b) Northern bobwhite[~~Quail~~] and rabbit: closed after December 31.
(5)[~~(6)~~][~~(c) Furbearer: December 5 through December 31.~~
~~(5)~~] Cedar Creek Lake Wildlife Management Area:
(a) Rabbits: closed after December 31;
(b) Squirrels: open under statewide season; and
(c) Closed to all other small game and furbearer hunting.
[~~(6) Central Kentucky Wildlife Management Area.~~
~~(a) Closed to small game and furbearer hunting except squirrels.~~
~~(b) A person shall not allow a dog to be unleashed:~~
~~1. April 1 until the third Saturday in August; or~~
~~2. At other times of the year, except on a Tuesday, Thursday, Saturday, Sunday, or during an authorized field trial.~~]
(6)[~~(7)~~] Clay Wildlife Management Area. The area shall be closed for four (4) consecutive days beginning on the first Friday in December to all hunting except archery deer hunting and the pheasant quota hunt specified in Section 4 of this administrative regulation.
(a) Northern bobwhite[~~Quail~~] and rabbit: closed after December 31.
(b) Grouse: October 1 through December 31.
(c) Pheasant: beginning on the Tuesday following the pheasant quota hunt through December 31, pheasant shall be a legal game species and may be taken on this area with a valid Kentucky hunting license. The daily limit shall be three (3) birds of either sex per hunter.
(d) Quota fox hunting field trials:
1. There shall be a maximum of two (2) four (4) day events per calendar year.
2. Participants shall be limited to 250 per event.
3. The area shall be closed to nonparticipants.
4. Participants shall wear laminated identification badges issued by the department during the event and return the laminated badges at the close of the event to department personnel.
(7)[~~(8)~~] Curtis Gates Lloyd/Mullins Wildlife and Recreation Area.
(a) Northern bobwhite[~~Quail~~] and rabbit: closed after December 31.
(b) A person shall not allow a dog to be unleashed from April 1 until the third Saturday in August except while squirrel hunting
(8)[~~(9)~~] [~~Daviess County Wildlife Management Area. Closed to hunting for small game and furbearers.~~
~~(10)~~] Dix River Wildlife Management Area:
(a) Squirrel: statewide.
(b) Northern bobwhite[~~Quail~~] and rabbit: November 1 through December 31.
(c) Grouse: October 1 through December 31.
(9)[~~(10)~~][~~(d) Furbearers: statewide.~~
~~(11)~~] Fleming Wildlife Management Area.
(a) Northern bobwhite[~~Quail~~] and rabbit: closed after December 31.
(b) Grouse: October 1 through December 31.
(10)[~~(11)~~][~~(12)~~] Green River Lake Wildlife Management Area. The area shall be closed for four (4) consecutive days beginning on the third Friday in November to all hunting except archery deer hunting and the pheasant quota hunt specified in Section 4.
(a) Northern bobwhite[~~Quail~~] and rabbit: closed after December 31.
(b) Grouse: closed to hunting and trapping.
(c) Pheasants: beginning on the Tuesday following the pheasant quota hunt through December 31, pheasant shall be a legal game species and may be taken on this area with a valid Kentucky hunting license. The daily limit shall be three (3) birds of either sex

per hunter.

(11)[(12)][(13)] Higginson-Henry Wildlife Management Area. Northern bobwhite[Quail] and rabbit: closed after December 31.

(12)[(13)][(14)] Kleber Wildlife Management Area. Northern bobwhite[Quail] and rabbit: closed after December 31.

(13)[(14)][(15)] Lake Cumberland Wildlife Management Area.

(a) Grouse: October 1 through December 31.

(b) Northern bobwhite[Quail] and rabbit: closed after December 31.

(14)[(15)][(16)] Mill Creek Wildlife Management Area[, including private inholdings].

[(a)] Northern bobwhite[Quail] and rabbit: closed after December 31.

(15)[(16)] Miller-Welch Central Kentucky Wildlife Management Area.

(a) Closed to small game and furbearer hunting except squirrels

(b) A person shall not allow a dog to be unleashed:

1. April 1 until the third Sunday in August; or

2. At other times of the year, except on a Tuesday, Thursday, Saturday, Sunday, when hunting squirrels, or during an authorized field trial

[(b) Furbearer: December 5 through December 31.]

(16)[(17)] Nolin Lake Wildlife Management Area Northern bobwhite[Quail] and rabbit: closed after December 31.

(17)[(18)] Paul Van Booven Wildlife Management Area.

(a) Closed to vehicle access from an hour after sunset until an hour before sunrise.

(b) Closed to Northern bobwhite hunting [Peal Wildlife Management Area.

(a) Furbearer hunting: twenty (20) day season beginning the day after the modern gun deer season.

(b) Furbearer trapping: December 1 through 10, water sets only

(c) Quail and rabbit: closed after December 31.]

(18)[(19)] Pennyrile Forest Wildlife Management Area. Grouse: December 1 through December 31; daily limit, two (2).

(19)[(20)] Pioneer Weapons Wildlife Management Area. A person shall not:

(a) Hunt with a breech-loading firearm; or[;]

(b) Except as authorized by the department, carry a breech-loading firearm with ammunition in the chamber or magazine[; or

(c) Hunt small game with shot larger than number two (#2)].

(20)[(21)] Robinson Forest Wildlife Management Area.

(a) Hunting is not permitted on the Main Block[under the requirements of 301 KAR 4:200].

(b) The remainder of the WMA shall be open under statewide requirements.

(21)[(22)] Taylorsville Lake Wildlife Management Area.

(a) The area east of Van Buren Boat Ramp shall be closed to public access from November 1 through the last day of February.

(b) Northern bobwhite[Quail] and rabbit: closed after December 31.

(22)[(23)] [Pennyrile]Tradewater Wildlife Management Area. Grouse: December 1 through December 31; daily limit, two (2).

(23)[(24)] West Kentucky Wildlife Management Area, McCracken County.

(a) A person shall not hunt on a tract designated by numbers followed by the letter "A".

(b) Northern bobwhite[Quail] and rabbit:

1. Tracts 2, 3, 6 and 7: closed after December 31.

2. Tracts 1, 4 and 5. From one-half (1/2) hour before sunrise until 1 p.m., local time, January 1 through 10, unless maximum acceptable harvest levels have been reached prior to January 10 as determined from hunter use data. A hunter shall report daily to the area supervisor all hours hunted.

3. If a tract is closed before January 10, a sign announcing closure shall be posted at the hunter check station at least twenty-four (24) hours prior to the closure.

(c) A person shall not:

1. Use a rifle or ball or slug ammunition;

2. Allow an unleashed dog except while squirrel hunting; or

3. Operate a vehicle on Tract 6 from February 1 through April 16.

(24)[(25)] [Westvaco Public Hunting Areas. A person hunting on a Westvaco Public Hunting Area shall possess a valid Westvaco Hunting Permit.

(26)] Yellowbank Wildlife Management Area. Northern bobwhite[Quail] and rabbit: closed after December 31.

Section 4. Pheasant Quota Hunts. (1) There shall be a pheasant quota hunt on the Green River Wildlife Management Area for three (3) consecutive days beginning the third Friday in November, and Clay Wildlife Management Area for three (3) consecutive days beginning the first Friday in December. There shall be a one (1) day clean-up hunt immediately following each of the hunts for pheasant quota hunters drawn for that particular Wildlife Management Area.

(2) Hunt hours for each day shall be from 9 a.m. to 4 p.m.

(3) During the quota hunts or clean-up hunts, a person shall wear hunter orange as specified in 301 KAR 2:172.

(4) The daily bag limit per hunter [for each day] shall be two (2) birds of either sex, except for the clean-up hunt and subsequent days open to pheasant hunting when the daily bag limit shall be three (3) birds of either sex.

(5) Pheasant quota hunt procedures

(a) A person selected for a pheasant quota hunt may hunt on the one (1) day clean-up hunt for that area.

(b) A person shall apply for a quota hunt drawing through an automated telephone system by calling the number published in the current department Fall Hunting and Trapping Guide from a touch-tone telephone between September 1 and September 30 and shall:

1. Provide his or her Social Security number;

2. Indicate his or her choice of hunt days; and

3. Pay a three (3) dollar nonrefundable application fee for each application by:

a. Check;

b. Money order;

c. Visa; or

d. MasterCard.

(c) A single applicant may request a number of slots, up to five (5), to be a group for which he or she would like to apply. The applicant shall provide [his or her and] each party member's Social Security number and a total application fee for each person in the party.

(d) Persons who have not yet reached their 16th birthday by the date of the hunt shall apply as part of a party that includes at least one (1) adult.

(e) A person shall not apply more than one (1) time for each hunt and shall not be drawn for more than one (1) hunt.

(f) The department shall select hunters by a random drawing of all applicants.

(g) The successful applicant shall pay to the department by October 30, the fee, specified by 301 KAR 3:022,[a twenty-five (25) dollar per hunter, per day, fee] by one (1) of the following methods:

1. A check or money order with the confirmation number, Social Security number and hunts that are being paid for, written on the check or enclosed with the money order;

2. Web payment due when the applicant checks drawing results; or

3. If a group is successfully drawn, a single payment as specified in subparagraphs 1 and 2 of this paragraph, providing data for the entire group.

(h) Upon receipt of the check or money order, the department shall issue the appropriate pheasant quota hunt permits.

(i) A person participating in a quota hunt shall show:

1. A department-issued pheasant quota hunt permit;

2. A[His or her] valid Kentucky hunting license or proof of exemption[, combination or senior/disabled license, except a person on military furlough for more than three (3) days may show his military identification instead of a license]; and

3. A[His or her] hunter education card, if required.

(j) 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.

(k) A person shall[must] comply with all quota hunt require-

ments or be ineligible to apply for any quota hunt the following year except for the elk quota hunt.

Section 5. Northern Bobwhite and Rabbit Quota Hunts. (1) There shall be Northern bobwhite and rabbit quota hunts on a tract of the Peabody Wildlife Management Area.

(2) The commissioner **shall**[will] set the number of quota hunts and dates annually.

(3) Hunt hours for each day shall be from one-half (1/2) hour before sunrise to two (2) p.m.

(4) During the quota hunts, a person shall wear hunter orange as specified in 301 KAR 2:172.

(5) The daily bag limit per hunter shall be four (4) Northern bobwhite during Northern bobwhite quota hunts and four (4) rabbits during rabbit quota hunts.

(6) Quota hunt procedures.

(a) A person selected for a quota hunt may only hunt the species identified on the permit.

(b) A person shall apply for a quota hunt drawing through an automated telephone system by calling the number published in the current department Fall Hunting and Trapping Guide from a touch-tone telephone between September 1 and September 30 and shall:

1. Provide his or her Social Security number;

2. Indicate his or her choice of hunt days; and

3. Pay a three (3) dollar nonrefundable application fee for each application by:

a. Check;

b. Money order;

c. Visa; or

d. MasterCard.

(c) A single applicant may request a number of slots, up to three (3), to be a group for which he or she would like to apply. The applicant shall provide each party member's Social Security number and a total application fee for each person in the party.

(d) **A person who has not yet reached his or her**[Persons who have not yet reached their] 16th birthday by the date of the hunt shall apply as part of a party that includes at least one (1) adult.

(e) A person shall not apply more than one (1) time for a Northern bobwhite or rabbit quota hunt and shall not be drawn for more than one (1) Northern bobwhite or rabbit quota hunt.

(f) The department shall select hunters by a random drawing of all applicants.

(g) A person participating in a quota hunt shall show:

1. A department-issued quota hunt permit;

2. A valid Kentucky hunting license or proof of exemption; and

3. A hunter education card, if required.

(h) A party participating in the quota **shall**[must] submit a hunting log within seven (7) days after the hunt.

(i) 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.

(j) Quota hunts identified as mentor **shall**[must] have a minimum of one (1) youth as a member of the party.

(k) A person **shall**[must] comply with all quota hunt requirements or be ineligible to apply for any quota hunt the following year except for the elk quota hunt.

MARK S. CRAMER, Deputy Commissioner
For Dr. JONATHAN GASSETT, Commissioner
MARCHETTA SPARROW, Secretary
APPROVED BY AGENCY: March 7, 2008
FILED WITH LRC: April 2, 2008 at 3 p.m.
CONTACT PERSON. Rose Mack, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky 40601, phone (502) 564-3400, fax (502) 564-9136.

COMMERCE CABINET
Department of Fish and Wildlife Resources
(As Amended at ARRS, June 10, 2008)

301 KAR 2:081. Transportation and holding of native wildlife.

RELATES TO: KRS 150.015, [150.180, 150.280,] 150.290, 150.305, 150.320, 150.330, 150.360, 150.370, 150.990
STATUTORY AUTHORITY: KRS 150.025, 150.180, 150.280
NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025 authorizes the department to regulate the buying, selling, or transporting of game and the seasons and methods of **taking**[take]. KRS 150.180 authorizes the department to regulate the buying, selling, or transporting of protected wildlife. KRS 150.280 authorizes the department to promulgate administrative regulations to establish the procedures for the propagation and holding of protected wildlife. This administrative regulation is necessary to control the indiscriminate possession and commercialization of wildlife, [and] to ensure minimum welfare standards for lawfully possessed [in-sure that] wildlife [is humanely and properly cared for], to protect the public and native wildlife from wildlife-borne diseases, and to prevent the introduction of wildlife that might be detrimental to native fauna and flora.

Section 1. Definitions. (1) "Circus" means a traveling public entertainment show consisting of acrobats, clowns, and trained animals, but shall not include a show including wrestling bears or other direct contact between members of the public and inherently-dangerous animals.

(2) "Native wildlife" means wildlife which have historically existed or currently exist in the wild in Kentucky without introduction by man, not including naturalized introduced species such as starlings, house sparrows and Eurasian collared doves.

Section 2. Exemptions. Transportation permits and captive wildlife permits shall not be required for the importation or possession of species listed in this administrative regulation by facilities that are accredited by the American Zoo and Aquarium Association.

Section 3. (1) Except as specified in Section 2 of this administrative regulation and subsection (2) of this section, a person shall not import or possess:

(a) Alligator snapping turtle (Macrochelys temminckii);

(b) Black bear (Ursus americanus);

(c) Copperbelly water snake (Nerodia erythrogaster neglecta);

(d) Cougar or mountain lion (Felis concolor);

(e) Any federally threatened or endangered species;

(f) Wild turkey (Meleagris gallopavo[gallapove]); or

(g) Wolf (Canis lupus).

(2) The commissioner may allow the importation or possession of the species listed in subsection (1) of this section by circuses or for legitimate scientific or educational purposes by:

(a) A zoo that is designated as the official zoo of a municipality.

(b) A government agency;

(c) A college or university; or

(d) A similar educational or research institution.

Section 4. Importation prohibited. (1) The following species shall not be imported into Kentucky unless specified in Section 2 of this administrative regulation or subsection (2) of this section:

(a) Coyotes (Canis latrans);

(b) Foxes (Vulpes spp; Alopex lagopus; Urocyon cinereoargenteus);

(c) Raccoons (Procyon lotor); and

(d) Skunks (Mephitis spp.; Spilogale putorius; Conepatus leuconotus).

(2) The commissioner may allow the importation or possession of the species listed in subsection (1) of this section by circuses or for legitimate scientific or educational purposes by:

(a) A zoo that is:

designated as the official zoo of a municipality.

(b) A government agency;

(c) A college or university; or
(d) A similar educational or research institution.

Section 5. Taking and Possessing Native Wildlife. (1) A person shall not hold native wildlife in captivity that was not legally taken or possessed. A person shall not buy or sell, offer to buy or sell, trade, or barter native wildlife or parts thereof, obtained from the wild.

(2) Except as specified in Section 2 of this administrative regulation and subsections (7) and (8)[~~(6) and (7)~~] of this section, a person holding native wildlife in captivity shall apply for and obtain a permit prior to acquiring wildlife.

(3) A person permitted to rehabilitate native wildlife as specified in 301 KAR 2.075 shall not be issued a commercial or noncommercial captive wildlife permit.

(4) A[~~All~~] commercial and noncommercial captive wildlife permit holder[~~holders~~] shall maintain accurate records for captive bred and wild-captured wildlife for five (5) years. Records shall be available for inspection by a department representative [~~at a reasonable hour~~]. Records shall include:

(a) For each captive bred animal:

1. Common and scientific name;

2. A certificate of origin, bill of sale, receipted invoice or evidence of legal acquisition from out of state;

3. Date of birth;

4. Date of each transaction related to the sale, purchase, trade, barter or gifting; and

5. The complete name, address, phone number and captive wildlife permit number of the person to whom the animal was sold, traded, bartered or gifted or from whom the animal was purchased or otherwise received.

(b) For each wild-captured animal:

1. Common and scientific name;

2. Date and location of capture from the wild or date when received or given as a gift;

3. Trapping or hunting license number of the individual obtaining the animal except for reptiles and amphibians; and

4. The complete name, address, phone number and captive wildlife permit number of the person to whom the animal was gifted or from whom the animal was received as a gift.

(5) Commercial captive wildlife permit.

(a) A commercial captive wildlife permit shall be required for persons selling [~~wishing to sell~~], offering[~~offer~~] to sell, trading[~~trade~~], or bartering[~~barter~~] native wildlife. [~~A person shall not sell, offer to sell, trade, or barter native wildlife or parts thereof, obtained from the wild.~~]

(b) A commercial captive wildlife permit shall be renewable annually from the date of issue.

(6)[~~(c) The commercial captive wildlife permit fee shall be $100 a year.~~

~~(5)~~] Noncommercial captive wildlife permits.

(a) A noncommercial captive wildlife permit shall be[~~is~~] required for persons possessing [~~wishing to possess~~] native wildlife, but not selling, offering[~~do not intend to sell, offer~~] for sale, trading or bartering[~~trade or barter~~] animals.

(b) A noncommercial captive wildlife permit [~~fee~~] shall be [~~seventy five (75) dollars and be~~] renewable three (3) years from the date of issue.

(7) Northern bobwhite[~~(6) Bobwhite quail~~]

(a) Fifty (50) or fewer Northern bobwhite[~~bobwhite quail~~] may be possessed for personal use without a permit, provided the birds are not propagated or sold.

(b) Proof of purchase shall be retained as permission to possess.

(8)[~~(7)~~] Amphibians and reptiles.

(a) Except as provided for in Section 2[~~(1)~~] of this administrative regulation and this subsection, captive wildlife permits are not required for persons taking or possessing up to five (5) individuals of each species of a native reptile or amphibian. Exception to taking or possessing five (5) individuals of each species:

1. No limit on snapping and smooth and spiny softshell turtles;

2. Fifteen (15) per night limit on bullfrogs; and

3. Possession limit of twenty-five (25) dusky salamanders (spring lizards) of the genus Desmognathus.

(b) There shall not be a limit on the number of individuals of each species possessed by a commercial or noncommercial captive wildlife permit holder, provided the permit holder does not possess more than five (5) wild-caught individuals of each species of amphibian or reptile.

(c) A captive wildlife permit shall not be required to hold reptiles with a color morphology that is distinctly different from the wild type of the same species of reptile.

(9)[~~(d) All commercial and noncommercial captive wildlife permit holders keeping native amphibians and reptiles shall retain:~~

~~1. A certificate of origin;~~

~~2. A bill of sale;~~

~~3. Receipted invoice; or~~

~~4. Other evidence of lawful acquisition of each individual of any taxa captively produced or legally obtained from out of state.~~

~~(e) Accurate records for animals, including wild-captured, shall be maintained for five (5) years by the permit holder and be available for inspection by a department representative at a reasonable hour. Records shall include~~

~~1. Common and scientific names;~~

~~2. Number of reptiles or amphibians received or sold;~~

~~3. The birth dates of captive born animals;~~

~~4. The date, location and length of all wild-captured taxa, and~~

~~5. Date of all transactions including the complete name, address and phone number of the person from whom an animal was purchased, including the seller's permit number, or to whom the animal was sold, traded, bartered, or given as a gift.~~

~~(8)~~] Transportation permits and certificate of veterinary inspection.

(a) Prior to entry into Kentucky, a transportation permit shall be obtained for all shipments of wildlife (native and exotic). A person shall be responsible for applying for a transportation permit if he or she:

1. Receives a shipment of wildlife;

2. Imports wildlife for his or her own use or possession; or

3. Transports wildlife into and through the state to a destination outside Kentucky.

(b) A copy of a valid transportation permit shall accompany all shipments of wildlife into Kentucky.

(c) **An individual transportation permit**[~~Individual transportation permits~~] shall be valid for one (1) shipment of wildlife.

(d) **An annual transportation permit**[~~Annual transportation permits~~] shall be valid for multiple wildlife shipments for one (1) year from the date of issue. An annual transportation permit holder[~~holders~~] shall:

1. Notify the department in writing of any changes or additions subsequent to the original application so that the permit may be amended prior to future wildlife importation; and

2. Notify the department by telephone Monday though Friday between 8 a.m. and 4:30 p m. at least forty-eight (48) hours prior to each shipment of wildlife of the date of expected shipment, source of the shipment and the species and number being shipped.

(e) All shipments of wildlife, except for amphibians and reptiles, shall be accompanied by a certificate of veterinary inspection stating that the wildlife is free of symptoms of disease. A federal quarantine certificate may be substituted for the certificate of veterinarian inspection.[~~(f) Fees.~~

~~1. The individual transportation permit fee shall be twenty-five (25) dollars.~~

~~2. The annual transportation permit fee shall be $250.~~]

Section 6. Applying for Permits. (1) **An application for a**[~~Applications for~~] captive wildlife and transportation **permit**[~~permits~~] shall be made on standard forms.

(2) The applicant shall indicate the source of supply of the wildlife.

(3) After the permit is issued, the permit holder shall retain a bill of sale or other written proof to show that the wildlife was obtained from a legal source.

(4) A permit holder shall show this written proof to a conservation officer upon request.

(5) **An application**[~~Applicants~~] shall construct holding facilities that meet or exceed the enclosure specifications established in Sections 6 and 7 of this administrative regulation for each listed

species to be acquired before submitting the captive wildlife application.

(6) An applicant[~~Applicants~~] shall possess an approved permit before acquiring animals.

(7) Failure to provide accurate, truthful and complete information on the application form shall result in:

(a) Immediate withdrawal or revocation of the permit, and

(b) Confiscation of the wildlife imported under the permit.

Section 7. Confining Facilities. (1) Cages, pens, or other enclosures for confining native wildlife shall be of sufficient structural strength to:

(a) Prevent the escape of the captive animals,

(b) Protect the caged animal from injury and predators; and

(c) Prevent the entrance of free individuals of the same species.

(2) Wing-clipped and pinioned birds may be kept in suitable unroofed enclosures even though wild birds of the same species may enter the enclosure.

(3) A person shall not maintain any native wildlife in captivity in an unsanitary or unsafe condition or in a manner that results in the maltreatment or neglect of that wildlife.

(4) Native wildlife shall not be confined in any cage or enclosure that does not meet the cage specifications in Section 8[6] of this administrative regulation.

(5) Cages and enclosures in which native wildlife is held in captivity shall be maintained as follows:

(a) Clean drinking water shall be provided daily in clean containers;

(b) Swimming or wading pools shall be cleaned as needed to ensure good water quality;

(c) Enclosures shall provide adequate drainage of surface water;

(d) Captive mammals and birds shall be fed daily;

(e) Food shall be of a type and quantity that meets the nutritional requirements for the particular species and shall be provided in an unspoiled and uncontaminated condition;

(f) Feeding containers shall be kept clean, and uneaten food removed within a reasonable time;

(g) A shelter shall be provided for security and protection from inclement weather;

(h) Shade or an overhead structure shall be provided in warm seasons;

(i) Fecal and food wastes shall be removed from cages daily and stored or disposed of in a manner that prevents noxious odors or insect pests;

(j) Cage and enclosures shall be ventilated to prevent noxious odors;

(k) Hard floors within cages or enclosures shall be cleaned a minimum of once weekly;

(l) Cages or enclosures with dirt floors shall be raked a minimum of once every three (3) days and the waste removed;

(m) Animals that are compatible with one (1) another may be held in the same enclosure if the required floor space is provided, and

(n) Common walls shall be constructed between animals that are not compatible so the animals cannot interact.

Section 8. Minimum Enclosure Sizes and Associated Requirements for Stationary Facilities. (1) Birds

(a) Northern bobwhite[~~Bobwhite quail~~] older than fourteen (14) weeks shall be held in an enclosure with the following minimum specifications:

1. An enclosure for a single Northern bobwhite [~~quail enclosure~~] shall be a minimum of 100 square feet.

2. There shall be an increase in one (1) square foot per additional Northern bobwhite [~~quail~~].

3. Northern bobwhite [~~quail~~] may be held in smaller breeding pens during the breeding season.

(b) Ducks shall be held in an enclosure with the following minimum specifications:

1. There shall be no more than two (2) pairs or one (1) pair and their offspring confined to an area smaller than 100 square feet;

2. There shall be at least ten (10) square feet of water that is one (1) foot or greater in depth; and

3. There shall be at least twenty (20) square feet of additional land space and five (5) square feet of water surface for each additional adult duck.

(c) Geese shall be held in an enclosure with the following minimum specifications:

1. There shall be no more than two (2) pair or one (1) pair and their offspring confined to an area smaller than 500 square feet,

2. There shall be a minimum of fifty (50) square feet of water that is two (2) feet or greater in depth; and

3. There shall be at least 100 square feet of land and twenty-five (25) square feet of water surface for each additional adult goose.

(d) Ruffed grouse shall be held in an enclosure with the following minimum specifications:

1. 200 square feet of floor space for five (5) or fewer birds with a height of at least six (6) feet; and

2. There shall be an additional twenty (20) square feet of floor space for each additional bird.

(2) Mammals.

(a) Bats shall be kept in an enclosure with the following minimum specifications:

1. Little browns, long-eared and pipistrelles shall be kept in an enclosure that is at least 6 ft. x 6 ft. x 6 ft.

2. Evening and red bats shall be kept in an enclosure that is at least 8 ft. x 12 ft. x 8 ft.

3. Big browns and hoary bats shall be kept in an enclosure that is at least 10 ft. x 20 ft. x 8 ft.

(b) Foxes, bobcats and raccoons shall be held in an enclosure with the following minimum specifications:

1. A single animal enclosure shall be 8 ft. x 8 ft. x 6 ft. width; and

2. There shall be thirty (30) square feet floor space for each additional animal.

(c) Coyotes shall be held in an enclosure with the following minimum specifications:

1. A single animal enclosure shall be 8 ft. x 8 ft. x 6 ft. width; and

2. There shall be twenty-five (25) square feet floor space for each additional animal.

(d) Beaver and otter shall be held in an enclosure with the following minimum specifications:

1. A single animal enclosure shall be 8 ft. x 12 ft. x 6 ft. with a 4 ft. x 6 ft. pool that is three (3) feet deep at one (1) end;

2. There shall be an increase in horizontal cage size and pool size by eight (8) square feet for each additional animal.

3. Otters shall have a slide and a dry place for sleeping and retreat; and

4. Beavers shall be supplied with gnawing logs and a dry place for sleeping and retreat.

(e) Muskrat and mink shall be held in an enclosure with the following minimum specifications:

1. A single animal enclosure shall be 6 ft. x 4 ft. x 3 ft. with a 2 ft. x 4 ft. pool which is two (2) feet deep at one (1) end;

2. There shall be an increase in horizontal cage size by eight (8) square feet and a pool size of two (2) square feet; and

3. Muskrats shall have gnawing material.

(f) Gray squirrels and fox squirrels shall be held in an enclosure with the following minimum specifications:

1. A single animal enclosure shall be 4 ft. x 4 ft. x 8 ft.; and

2. There shall be an increase in floor space by two (2) square feet for each additional animal.

(g) Skunk, opossum, rabbit and woodchuck shall be held in an enclosure with the following minimum specifications:

1. A single animal enclosure shall be 6 ft. x 8 ft. x 8 ft.;

2. There shall be an increase in floor space by four (4) square feet for each additional animal; and

3. Woodchucks shall have several gnawing logs approximately six (6) inches in diameter.

(h) Weasel shall be held in an enclosure with the following minimum specifications:

1. A single animal enclosure shall be 3 ft. x 3 ft. x 3 ft.; and

2. There shall be an increase in floor space by three (3) square feet for each additional animal.

Section 9. Mobile Facilities. Mobile facilities used in transporting native wildlife shall comply with the following requirements:

(1) Facilities shall be equipped to provide fresh air without injurious drafts and adequate protection from the elements;

(2) The animal housing area shall be free of engine exhaust fumes;

(3) A cage[~~Cages~~] shall be large enough to ensure that each animal has sufficient room to stand erect and lay naturally;

(4) The structural strength of the enclosure shall be sufficient to contain the live animals and to withstand the normal rigors of transportation; and

(5) Wildlife transported in the same cage area shall be in compatible groups.

Section 10. Temporary Facilities. Native wildlife housed in temporary facilities or exhibits shall be housed in cages that meet the minimum cage specifications as provided in Section 7 of this administrative regulation when wildlife are present in any geographical location for more than ten (10) days.

Section 11. Inspections. (1) The holder of a captive wildlife permit shall allow a conservation officer to inspect the facilities at any reasonable time.

(2) The conservation officer shall immediately notify the permit holder and the commissioner if his inspection reveals that wildlife is being kept in unsanitary or inhumane conditions.

(3) The captive wildlife permit shall be revoked and all captive wildlife confiscated if the unsatisfactory conditions are not corrected within ten (10) days of the initial inspection.

(4) The captive wildlife permit shall be revoked and all captive wildlife confiscated if an application was not made in good faith or if the permit holder is convicted of any law violation concerning the species for which he holds the permit.

(5) Fees shall not be refunded for permits that are revoked.

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

(a) "The Commercial and Noncommercial Captive Wildlife Permit Application, January 2006 edition";

(b) "The Annual Transportation Permit Application, January 2006 edition"; and

(c) "The Individual Transportation Permit Application, January 2006 edition".

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Fish and Wildlife Resources, #1 Sportsman's Lane, Frankfort, Kentucky, Monday through Friday, 8 a.m. to 4 30 p.m.

MARK S. CRAMER, Deputy Commissioner
For DR. JONATHAN GASSETT, Commissioner
MARCHETTA SPARROW, Secretary
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COMMERCE CABINET
Kentucky Department of Fish and Wildlife Resources
(As Amended at ARRS, June 10, 2008)

301 KAR 2:172. Deer hunting seasons, zones, and requirements.

RELATES TO: KRS 150.010, 150.177 [~~150.170, 150.175~~], 150.180, [~~150.340, 150.360, 150.370,~~] 150.390, [~~150.395,~~] 150 990
STATUTORY AUTHORITY: KRS 150 025, 150.170, 150.175[~~(1)~~]
NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025 grants the department authority to establish hunting seasons, bag limits, methods of taking and other matters necessary to carry out the purpose of KRS Chapter 150. KRS 150.170 exempts landowners, servicemen, and other groups from hunting license and permit requirements. KRS 150.175 defines the kinds of licenses and permits to be issued by the department. This administrative regulation establishes deer hunting seasons and zones, defines[~~prescribes~~] legal methods of taking and establishes [~~tagging and~~] checking and recording requirements for deer hunting.

Section 1. Definitions. (1) "Adult" means a person[~~an individual~~] who is at least eighteen (18) years of age.

(2) "Antlered deer" means a deer with a visible antler protruding above the hairline.

(3) "Antlerless deer" means a deer with no visible antler protruding above the hairline, including female deer and male fawns (button bucks).

(4) "Archery equipment" means a long bow, recurve bow or compound bow incapable of holding an arrow at full or partial draw without aid from the archer.

(5) "Arrow" means the projectile fired from a bow or crossbow.

(6) "Barbed broadhead" means a point or portion of a blade projecting backward from a broadhead designed to hold an arrow within an animal.

(7) "Bonus antlerless permit" means a permit which, in conjunction with appropriate licenses and permits, seasons and methods, allows the holder to take two (2) additional antlerless deer.

(8) "Crossbow" means a bow designed or fitted with a device to hold an arrow at full or partial draw without aid from the archer.

(9) "Deer" means a member of the species Odocoileus virginianus.

(10) [~~"Electronic decoy" means a motorized decoy powered by electricity, regardless of source.~~

~~(11)~~] "Firearm" means a breech or muzzle-loading rifle, shotgun or handgun.

(11)[~~(12)~~] "Fully-automatic firearm" means a firearm which fires more than one (1) time with a single pull of the trigger.

(12)[~~(13)~~] "License year" means the period from March 1 through the following last day of February.

(13)[~~(14)~~] "Modern gun" means a rifle, handgun or shotgun which is loaded from the rear of the barrel.

(14)[~~(15)~~] "Muzzle-loading gun" means a rifle, shotgun or handgun which is loaded from the discharging end of the barrel or discharging end of the cylinder.

(15)[~~(16)~~] "Shotshell" means ammunition containing more than one (1) projectile.

(16)[~~(17)~~] "Statewide deer permit" means a permit, which, in conjunction with appropriate licenses, seasons, and methods, allows the holder to take one (1) either-sex deer and one (1) antlerless[~~-only~~] deer.

(17) "Statewide deer requirements" means the season dates, zone descriptions, bag limits, and other requirements and restrictions for deer hunting set forth in this administrative regulation.

(18) "Youth" means a person under the age of sixteen (16) by the date of the hunt.

(19) "Zone" means an area consisting of counties designated by the department within which deer hunting season dates and limits are set for the management and conservation of deer in Kentucky.

Section 2. License and Deer Permit Requirements. (1) Unless exempted by KRS 150.170, a person [~~hunting deer~~] shall carry[~~have~~] proof of purchase of a valid Kentucky hunting license and valid deer permit while hunting.

(2) In lieu of a statewide deer permit, a person possessing a valid junior statewide hunting license may use no more than two (2) junior deer hunting permits.

(3) [~~Unless exempted by KRS 150.170, a person hunting wild hogs or coyotes during a season or Wildlife Management Area hunt where a firearm is allowed for deer hunting, shall have proof of purchase of a valid Kentucky hunting license and valid deer permit.~~

~~(4)~~] A person whose name does not appear on a license or permit shall not use that license or permit to harvest deer.

(4)[~~(5) Unless exempted by KRS 150.170,~~] Bonus antlerless permits shall not be valid unless accompanied by a valid Kentucky

hunting license and statewide deer permit.

Section 3. Hunter Restrictions. (1) A deer hunter:

(a) Shall not take deer except during daylight hours;

(b) Shall not use dogs, except he or she may use leashed tracking dogs to recover wounded deer;

(c) Shall not take swimming deer; and

(d) Shall not take deer from a vehicle, boat, or while on horseback, except that a hunter in possession of a disabled hunting exemption permit issued by the department may use a stationary vehicle as a hunting platform.

(e) Shall not possess or use a decoy or call powered by electricity from any source.

(2) A deer hunter shall not take a deer with any device except a firearm, crossbow, or archery equipment.

(3) A deer hunter shall not use or possess while deer hunting:

(a) Rimfire ammunition;

(b) A fully-automatic firearm;

(c) A firearm with a magazine capacity greater than ten (10) rounds;

(d) Full metal jacketed ammunition;

(e) Tracer bullet ammunition;

(f) A shotshell containing larger than number two (2) size shot;

(g) A broadhead smaller than seven-eighths (7/8) inch wide;

(h) A barbed broadhead;

(i) A crossbow without a working safety device;

(j) A chemically-treated arrow; or

(k) An arrow with a chemical attachment[~~, or~~

~~(l) An electronic call or electronic decoy~~].

(4) Persons hunting deer shall not carry a firearm, except when a firearms deer season is open.

Section 4. Hunter Orange Clothing Requirements. (1) During the modern gun deer season, muzzle-loader season or the youth firearm season, a person hunting any species during daylight hours [~~except waterfowl~~], and any person accompanying a hunter, shall display solid, unbroken hunter orange visible from all sides on the head, back and chest **except when hunting waterfowl**.

(2) During the elk firearms seasons[~~firearm season~~], a person hunting any species [~~except waterfowl~~], and any person accompanying a hunter within the sixteen (16) county elk zone, shall display solid, unbroken hunter orange visible from all sides on the head, back, and chest **except when hunting waterfowl**.

(3)[~~These requirements shall not apply to a person~~

~~(a) Hunting waterfowl, or~~

~~(b) Hunting at night.~~

~~(4)~~] The hunter orange portions of a garment worn to fulfill the requirements of this section:

(a) May display a small section of another color; and

(b) Shall not have mesh weave openings exceeding one-fourth (1/4) inch by any measurement.

~~(4)~~[~~(5)~~] A camouflage pattern hunter orange garment worn without additional solid hunter orange on the head, back and chest shall not meet the requirements of this section.

Section 5. Statewide Season Dates. (1) A deer hunter may use archery equipment statewide from the first Saturday in September through the third Monday in January.

(2) A deer hunter may take deer with a modern firearm statewide beginning the second Saturday in November:

(a) For sixteen (16) consecutive days in Zones 1 and 2; and

(b) For ten (10) consecutive days in Zones 3 and 4.

(3) A deer hunter may use a muzzle-loading gun statewide:

(a) For two (2) consecutive days beginning the third Saturday in October;

(b) For nine (9) consecutive days beginning the second Saturday in December; and

(c) During any season when a modern gun may be used to take deer.

(4) A deer hunter may use a crossbow statewide:

(a) From October 1 through the end of the third full weekend in October;

(b) From the second Saturday in November through December 31; and

(c) During any season when a firearm may be used to take deer.

(5) Youth firearms season. For two (2) consecutive days beginning on the second Saturday in October, a youth may take antlered or antlerless deer with a firearm.

(6) Free youth weekend. For two (2) consecutive days beginning on the Saturday after Christmas, a youth may hunt deer without a hunting license or deer permit and may take deer with archery equipment, firearms, or crossbows. Statewide bag limits and harvest-reporting requirements shall apply.

Section 6. Zones. (1) Zone 1 shall consist of Anderson, Ballard, Boone, Bracken, Bullitt, Calloway, Campbell, Carlisle, Carroll, Christian, Crittenden, Franklin, Fulton, Gallatin, Grant, Graves, Hardin, Harrison, Hart, Henry, Hickman, Jefferson, Kenton, Livingston, Lyon, [~~Marion,~~] Marshall, McCracken, Nelson, Oldham, Owen, Pendleton, Robertson, Scott, Shelby, Spencer, [~~Taylor,~~] Trigg, Trimble, Washington, and Woodford Counties.

(2) Zone 2 shall consist of Adair, Allen, Barren, Bourbon, Boyd, [~~Boyle,~~] Breckinridge, Butler, Caldwell, Carter, [~~Casey,~~] Cumberland, Daviess, Edmonson, Fayette, Fleming, [~~Grayson,~~] Green, Greenup, Hancock, [~~Hart,~~] Henderson, Hopkins, Jessamine, Larue, Lawrence, Lewis, Logan, Marion, Mason, McLean, Meade, Mercer, Metcalfe, Monroe, Muhlenberg, Nicholas, Ohio, Rowan, Simpson, Taylor, Todd, Union, Warren, and Webster Counties.

(3) Zone 3 shall consist of Bath, Boyle, Casey, Clark, Clinton, Elliott, Estill, Garrard, Grayson, Johnson, Knox, Laurel, Lee, Lincoln, Madison, Menifee, Montgomery, Morgan, Powell, Russell, Whitley, and Wolfe Counties.

(4) Zone 4 shall consist of Bell, Breathitt, Clay, Floyd, Harlan, Jackson, Knott, Leslie, Letcher, Magoffin, Martin, McCreary, Owsley, Perry, Pike, Pulaski, Rockcastle, and Wayne Counties.

Section 7. Season and Zone Limits. (1) Except as provided in 301 KAR 2:111, 301 KAR 2:176, [~~and~~] 301 KAR 2:178, and 301 KAR 3:100, in a license year, a person shall not take more than:

(a) One (1) antlered deer; and

(b) The number of antlerless deer permitted in the zones specified in subsections (2), (3), (4), and (5)[~~(2) and (3)~~] of this section provided that the person has purchased the appropriate bonus antlerless permits.[~~; or~~

~~(c) The total number of deer permitted in the zones specified in subsections (2) and (3) of this section.~~]

(2) In zone 1, a person may take an unlimited number of antlerless deer[~~, provided that the person has purchased the appropriate bonus antlerless permits~~].

(3) In zone 2[~~zones 2, 3 and 4,~~] a person may take a total number of four (4) deer[~~, provided that the person has purchased the appropriate bonus antlerless permits~~].

(4) In zone 3, a person may take:

(a) A total of four (4) deer; and

(b) Only two (2) deer with a firearm.

(5) In zone 4, a person may take:

(a) A total of four (4) deer;

(b) Only two (2) deer with a firearm; and

(c) Antlered deer only with a firearm during:

1. Modern firearms season;

2. Early muzzleloader season; or

3. The first six (6) days of the late muzzleloader season.[~~Legal weapons. A person shall take deer only with the weapons specified for each zone below:~~

~~(a) Zones 1 and 2. Deer may be taken with any weapon;~~

~~(b) Zone 3. Only two (2) deer may be taken with a firearm; and~~

~~(c) Zone 4.~~

~~1. Only two (2) deer may be taken with a firearm; and~~

~~2. Antlerless deer shall not be legal during the modern firearm season or the early muzzleloader season.~~]

Section 8. Supervision of Youth Firearms Deer Hunters. (1) An adult shall:

(a) Accompany a person under sixteen (16) years old; and

(b) Remain in a position to take immediate control of the youth's firearm

(2) An adult accompanying a youth hunter shall not be required to possess a hunting license or deer permit if the adult is not hunting.

(3) An adult accompanying a youth during the youth firearm season shall not carry a firearm.

Section 9. Harvest Recording. Immediately after taking a deer, a person shall:

(1) Record, in writing, the species, date taken, county where taken, and sex of the deer before moving the carcass from the site where taken. This information shall be logged and registered on one (1) of the following:

(a) Hunter's log section on the reverse side of a license or permit;

(b) Hunter's log produced in a hunting guide;

(c) Hunter's log printed from the Internet;

(d) Hunter's log available from any KDSS agent; or

(e) An index card or reasonable facsimile thereof; and

(2) Retain the completed hunter's log in his or her possession whenever the hunter is in the field during the current season.

Section 10. Checking a Deer. (1) A person shall check a harvested deer by:

(a) Calling the toll free number, (877) 598-2401, [listed in the current Kentucky Hunting and Trapping Guide] before midnight [fall hunting and trapping guide] on the day the deer is recovered [harvested] prior to processing or removing the hide or head from the carcass;

(b) Providing the information requested by the automated check-in system; and

(c) Writing the confirmation number given by the system on the hunter's log described in Section 9 of this administrative regulation.

(2)(a) If a harvested deer leaves the possession of a hunter, the hunter shall attach a hand-made tag to the carcass.

(b) The hand-made tag shall contain the following information:

1. The confirmation number;

2. The hunter's name; and

3. The hunter's telephone number. [If a harvested deer leaves the possession of a hunter, the hunter shall attach a hand-made tag, which contains the confirmation number, hunter's name, and a phone number, to the carcass.]

(3) A person shall not knowingly provide false information when completing the hunter's log, checking a deer, or creating a carcass tag.

Section 11. Transporting and Processing Deer. (1) A person shall:

(a) Not transport an unchecked deer out of Kentucky;

(b) Have proof that a deer or parts of deer brought into Kentucky were legally taken;

(c) [Not submit deer taken outside Kentucky or in violation of any governing statute or administrative regulation for a state or national trophy deer listing; and

(d)] Not sell deer hides except to a licensed:

1. Fur buyer;

2. Fur processor; or

3. Taxidermist.

(2) A taxidermist or other individual who commercially butchers deer shall:

(a) Not accept deer carcasses or any part of a deer without a valid disposal permit issued by the department pursuant to KRS 150.411(3) or a proper carcass tag described in Section 10 of this administrative regulation.

(b) Keep accurate records of the hunter's name, address, confirmation number, and date received for each deer in his possession, and retain such records for a period of one (1) year.

MARK S. CRAMER, Deputy Commissioner
For DR. JONATHAN GASSET, Commissioner
MARCHETTA SPARROW, Secretary
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COMMERCE CABINET
Kentucky Department of Fish and Wildlife Resources
(As Amended at ARRS, June 10, 2008)

301 KAR 2:178. Deer hunting on Wildlife Management Areas and state parks.

RELATES TO: KRS [148.029(5),] 150.010, [150.025(2), 150.105, 150.170, 150.175, 150.180,] 150.340, [150.360,] 150.370, 150.390, [150.395, 150.640(1), 150.710,] 150.990

STATUTORY AUTHORITY: 148.029[(5)], 150.025[(1)], [150.105,] 150.620

NECESSITY, FUNCTION, AND CONFORMITY: KRS 148.029 authorizes the Department of Parks, in cooperation with the Department of Fish and Wildlife Resources, to implement wildlife management plans on state parks. KRS 150.025[(1)] and 150.620 authorize the department to establish hunting seasons, bag limits, methods of taking and other matters necessary to carry out the purpose of KRS Chapter 150 on Wildlife Management Areas (WMAs). This administrative regulation establishes deer hunting seasons, application procedures, and other matters pertaining to deer hunting on Wildlife Management Areas that differ from statewide requirements and on state parks as requested by the Department of Parks. [KRS 148.029(5) authorizes the Department of Parks, in cooperation with the Department of Fish and Wildlife Resources, to implement wildlife management plans on state parks. KRS 150.105 authorizes the Department of Fish and Wildlife Resources to permit the destruction of animals that are causing damage to property or spreading disease. KRS 150.025(1) authorizes the Department of Fish and Wildlife to open seasons and make those seasons apply to a limited area of the state.] This administrative regulation is necessary to manage hunting pressure on WMAs and to allow controlled deer hunting at selected state parks to relieve serious overpopulations of white-tailed deer that are damaging the ecological integrity of those[the] parks.

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) "Centerfire" means a type of firearm that detonates a cartridge by the firing pin striking a primer in the middle of the end of the cartridge casing.

(3) "In-line muzzleloading gun" means a firearm capable of being loaded only from the discharging end of the barrel or cylinder, that is also equipped with an enclosed ignition system located directly behind the powder charge.

(4)[(3)] "Mobility-impaired" means an individual who meets the requirements of Section 2(1) of 301 KAR 3:026.

(5)[(4)] "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.

(6)[(5)] "Optical enhancement" means any sighting device other than open or "iron" sights.

(7)[(6)] "Quota hunt" means a Wildlife Management Area or state park [deer] hunt where a participant is selected by a random drawing.

(8)[(7)] "Statewide deer requirements" mean the season dates, zone descriptions and other requirements for deer hunting established in 301 KAR 2:172.

(9)[(8)] "Wildlife management area or WMA" means a tract of land the department controls or manages through ownership, lease, license or cooperative agreement.

(10)[(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 require-

ments 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 2:172 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 requirements established in 301 KAR 2:172, [~~Section 5(1),~~] unless otherwise noted.

(4) An open firearm deer hunt:

(a) Shall be limited to United States Armed Forces and National Guard veterans who are residents of Kentucky, or nonresidents stationed in Kentucky, and who were deployed out-of-country during any portion of the most recent regular statewide deer season;

(b) Shall be the Wednesday following the third Monday in January for ten (10) consecutive days; and

(c) Participants shall follow statewide deer requirements and hunt only on WMAs designated as open for this special hunt.

(5) On a WMA, a person:

(a) Shall not use a nail, spike, screw-in device, wire or tree climber for attaching a tree stand or climbing a tree;

(b) May use a portable stand or climbing device that does not injure a tree;

(c) Shall not place a portable stand in a tree more than two (2) weeks before opening day, and shall remove it within one (1) week following the last day, of each hunting period;

(d) Shall plainly mark the portable stand with the hunter's[~~his~~] name and address; and

(e) Shall not use an existing permanent tree stand.

(6) A person without a valid quota hunt confirmation number shall not enter a WMA during a quota hunt on that area except:

(a) To travel through a WMA on an established road or to use an area designated open by a sign; or

(b) To accompany a movement-impaired hunter who was drawn to hunt. Only one (1) assistant shall be allowed and the assistant shall not be required to have applied for the quota hunt.

(7) Except if waterfowl hunting or hunting at night, a person hunting any species or a person accompanying a hunter shall wear hunter 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.

(8) A person shall not place, distribute or hunt over bait as prohibited in 301 KAR 3:010.

Section 3. General Quota Hunt Procedures. (1) A person who is not selected and applies to hunt the following year shall be given one (1) preference point for each year he or she 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) 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.

(5) 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.

(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.

(7) 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 each applicant's [~~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 movement-impaired hunter.

Section 5. Quota Hunt Participant Requirements. Except as otherwise specified in this administrative regulation, a person selected to participate in a quota hunt shall:

(1) Check-in and show proof of his or her Social Security number;

(2) Possess an annual Kentucky hunting license, except:

(a) A person on military furlough for more than three (3) days who shall show his or her 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 or she 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 or if not deer hunting;

(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 or state park 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 waterfowl, pheasant, quail, and deer quota hunt requirements, including the fifteen (15) inch minimum outside antler spread harvest restriction for antlered deer when in effect, or be ineligible to apply for any[a] quota hunt for these species the following year.

Section 6. WMA Hunting Dates, Requirements and Restrictions. (1) Adair WMA. The crossbow season shall be open under statewide requirements.

(2) Ballard WMA.

(a) On the main tract, the quota hunt shall be for two (2) consecutive days beginning on the first Saturday in November.

(b) On the main tract, the archery, crossbow, and youth firearm seasons shall be open under statewide requirements through October 14, except within the two (2) mile driving loop as marked by signs. This area shall[will] be closed to all hunting.

(c) The crossbow, modern firearm, youth firearm and muzzleloader seasons shall be open under statewide requirements only on the 400 acre tract south of Sallie Crice Road.

(d) A deer hunter shall not take an antlered deer with antlers having an outside spread of less than fifteen (15) inches.

(3) Barren River WMA. Open under statewide requirements except that on the Peninsula Unit, including Narrows, Goose and

Grass Islands, a person shall not hunt deer with a modern firearm.

(4) Beaver Creek WMA. The quota hunt shall be for two (2) consecutive days beginning the first Saturday in November.

(a) The limit shall be one (1) deer during the quota hunt.

(b) The crossbow season shall be open under statewide requirements.

(c) A deer hunter shall not take an antlered deer with antlers having an outside spread of less than fifteen (15) inches.

(5) Boatwright WMA. Open under statewide requirements except that on the Swan Lake Unit the archery and crossbow seasons[~~season~~] shall be open under statewide requirements through October 14, and the October youth deer season shall be open under statewide requirements.

(6) Cedar Creek Lake WMA. The crossbow season shall be open under statewide requirements.

(7) [~~Central Kentucky WMA. The archery hunt shall be:~~

~~(a) On Wednesdays, from the first Saturday in September through December 17, except during scheduled field trials as posted on the area bulletin board; and~~

~~(b) December 18 through the third Monday in January.~~

~~(8)~~] Clay WMA.

(a) On the main tract, crossbow and youth firearm seasons shall be open under statewide requirements, except archery hunting shall be prohibited during the quota fox hunting field trials as established in 301 KAR 2:049.

(b) The remainder of the WMA shall be open under statewide requirements for the archery, crossbow, and youth seasons, except during the quota deer hunt[~~On the Bailey and Manetta Booth Tracts, the youth firearm seasons shall be open under statewide requirements~~].

(c) The quota hunt shall be for two (2) consecutive days beginning the first Saturday in November.

(8)[~~(9)~~] Dewey Lake WMA.

(a) The crossbow[~~archery~~] and youth firearm seasons shall be open under statewide requirements.

(b) The use of firearms is prohibited for deer hunting on the portion of the area extending southward from the damn to Shoreline Campground Number One, and including all property from the WMA boundary downslope to the lake edge.

(c) A deer hunter shall not take an antlered deer with antlers having an outside spread of less than fifteen (15) inches

(9)[~~(10)~~] Dix River WMA. The crossbow, youth firearm, and muzzleloader seasons shall be open under statewide requirements.

(10)[~~(11)~~] Fishtrap Lake WMA.

(a) The quota hunt shall be for two (2) consecutive days beginning on the Saturday before Thanksgiving. The limit shall be one (1) deer.

(b) The crossbow and youth firearm season shall be open under statewide requirements.

(11)[~~(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 youth hunters age 15 and under;

3. Require check-in from noon to 8 p.m. Eastern Time on the day before the hunt or between 5.30 a.m. and 8 p.m. Eastern Time on hunt days;

4. Check-out as follows:

a. When finished hunting;

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 established public road or to use an area designated open by a sign, a person who has not checked in shall not enter the Grayson Lake WMA during the open youth hunt.

(b) The property of Camp Webb shall be open for a mobility-impaired deer hunting event during the first weekend of October [~~youth hunt~~] as established in 301 KAR 3:110.

(c) The crossbow hunt shall be from the first Saturday in September through the third Monday in January, except during the November open youth hunt.

(d) The statewide youth firearm season shall be open under statewide requirements.

(12)[~~(13)~~] Green River Lake WMA.

(a) The crossbow season shall be open under statewide requirements.

(b) The quota hunt shall be for two (2) consecutive days beginning the first Saturday in November.

(c)[~~(b)~~] Fifteen (15) openings shall be reserved in the quota hunt for mobility-impaired persons.

(d)[~~(c)~~] A deer hunter shall not take an antlered deer with antlers having an outside spread of less than fifteen (15) inches.

(e)[~~(d)~~] For the purposes of check-in and check-out times, the Green River Lake WMA shall be considered to be located in the Eastern Time Zone.

(13)[~~(14)~~] Higginson-Henry WMA.

(a) The youth firearm deer season shall be open under statewide requirements.

(b) A deer hunter shall not take an antlered deer with antlers having an outside spread of less than fifteen (15) inches.

(14)[~~(15)~~] J C. Williams WMA. The crossbow season shall be open under statewide requirements.

(15)[~~(16)~~] Kentucky River WMA. The crossbow season shall be open under statewide requirements.

(16)[~~(17)~~] Kleber WMA.

(a) The crossbow season shall be open under statewide requirements, except during a quota hunt.

(b) The quota hunts shall be as follows:

1. The first quota hunt shall be for two (2) consecutive days beginning the first Saturday in November; and

2. The second quota hunt shall be for two (2) consecutive days beginning the first Saturday in December.

(c) The youth firearm season shall be open under statewide requirements.

(17)[~~(18)~~] Knobs State Forest WMA. The crossbow season shall be open under statewide requirements

(18)[~~(19)~~] Lake Barkley WMA. Open under statewide requirements 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)[~~(20)~~] Lewis County WMA.

(a) The modern firearm and youth firearm seasons shall be open under statewide requirements, except that the use of centerfire[~~modern~~] rifles and handguns shall be prohibited.

(b) The October muzzleloader season shall be open under statewide requirements.

(c) The crossbow season shall be open under statewide requirements.

(20)[~~(21)~~] Livingston County WMA. The crossbow, youth firearm, muzzleloader, and modern firearm seasons shall be open under statewide requirements, except a person shall not hunt deer with a modern gun during the modern firearm deer season.

(21)[~~(22)~~] Curtis Gates Lloyd WMA. The crossbow season shall be open under statewide requirements.

(22)[~~(23)~~] Mill Creek WMA.

(a) The crossbow season shall be open under statewide requirements.

(b) The quota hunt shall be for two (2) consecutive days beginning the first Saturday in November. The limit shall be one (1) deer.

(23) Miller Welch-Central Kentucky WMA. The archery hunt shall be:

(a) On Wednesdays, from the first Saturday in September through December 17, except during scheduled field trials as posted on the area bulletin board, and

(b) December 18 through the third Monday in January.

(24) Mud Camp Creek WMA. The crossbow, youth firearm, and muzzleloader seasons shall be open under statewide requirements.

(25) Mullins WMA. The crossbow season shall be open under statewide deer requirements.

(26) Ohio River Islands WMA. On the Stewart Island Unit:

(a) The muzzleloader season shall be for two (2) consecutive days beginning the third Saturday in October.

(b) The archery season shall be from the first Saturday in Sep-

tember through October 14.

(c) The crossbow season shall be from October 1 through October 14.

(d) The October youth season shall be open under statewide requirements.

(e)[(d)] The remainder of the WMA shall be open under statewide requirements.

(27) Paintsville Lake WMA.

(a) The quota hunt shall be for two (2) consecutive days beginning the first Saturday in November.

(b) The crossbow and youth firearm seasons[season] shall be open under statewide requirements.

(c) The use of firearms is prohibited for deer hunting on that portion of the area extending eastward from the drainage of Glade Branch, along the north edge of the lake, to the No Hunting Area surrounding Rocky Knob Recreation Area and enclosing all property from the WMA boundary downslope to the lake edge. Also included are the islands to the south, and that portion of the area extending eastward, along the south edge of the lake, from the drainage of Shoal Branch to the No Hunting Area surrounding the dam and ranger station, and extending downslope to the edge of the lake.

(d) A deer hunter shall not take an antlered deer with antlers having an outside spread of less than fifteen (15) inches.

(28) Peabody WMA.

(a) The crossbow, youth firearms and muzzleloader seasons shall be open under statewide requirements.

(b) The modern firearm season shall be open under statewide requirements for ten (10) consecutive days beginning the second Saturday in November.

(29) Pennyrile State Forest-Tradewater WMA.

(a) The crossbow season shall be open under statewide requirements.

(b) The quota hunt shall be for two (2) consecutive days beginning the first Saturday in November.

(c)[(b)] A deer hunter shall not take an antlered deer with antlers having an outside spread of less than fifteen (15) inches.

(30) Pioneer Weapons WMA. Statewide requirements shall apply except that a person:

(a) Shall not use a modern firearm;

(b) Shall not use an in-line muzzleloading gun;

(c) Shall not use a scope or optical enhancement; and

(d) May use a crossbow during the entire archery season.

(31) Dr. James R. Rich WMA.

(a) The crossbow season shall be open under statewide requirements, except during a quota hunt.

(b) The quota hunts shall be as follows:

1. The first quota hunt shall be for two (2) consecutive days beginning the first Saturday in November; and

2. The second quota hunt shall be for two (2) consecutive days beginning the first Saturday in December

(c) The youth firearm season shall be open under statewide requirements.

(32) Robinson Forest WMA.

(a) A person shall not hunt deer on the main block of Robinson Forest.

(b) The remainder of the WMA shall be open under statewide requirements.

(33) Sloughs WMA.

(a) On the Sauerheber Unit, the archery, crossbow, muzzleloader and youth firearm seasons shall be open under statewide requirements through October 31, except that the Crenshaw and Duncan II Tracts shall be open under statewide requirements through the end of modern firearm season.

(b) The remainder of the WMA shall be open under statewide requirements.

(34)[(33)] South Shore WMA.

(a) The youth firearm, October muzzleloader and modern firearm seasons shall be open under statewide requirements through November 14, except that the use of centerfire [modern] rifles and handguns shall be prohibited.

(b) The archery and crossbow seasons [season] shall be open under statewide requirements, except the area shall be closed November 15 through January 15.

[(34) Paul Van Booven and Robinson Forest WMAs.

(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 requirements, except a person shall not hunt deer with a modern gun.]

(35) T.N. Sullivan WMA. The crossbow season shall be open under statewide requirements.

(36) R.F. Tarter WMA. The crossbow, youth firearm and muzzleloader seasons shall be open under statewide requirements.

(37) Taylorsville Lake WMA.

(a) The quota hunts [hunt] shall be as follows:

1. Two (2) consecutive days beginning the first Saturday in November;

2. Two (2) consecutive days beginning the first Saturday in December; and

3. Two (2) consecutive days beginning the first Saturday in January.

(b) The youth firearm season shall be open under statewide requirements.

(c) The crossbow season shall be open under statewide requirements, except that it shall be closed during the quota hunt.

(38) Twin Eagle WMA. The crossbow season shall be open under statewide requirements.

(39) Twin Knobs Campground.

(a) The quota hunt shall be on the second Saturday in December for mobility-impaired persons.

(b) The area shall be closed to the statewide archery season.

(40) Paul Van Booven WMA.

(a) This area is closed to vehicle access from an hour after sunset until an hour before sunrise.

(b) The crossbow, muzzleloader, and youth firearm seasons shall be open under statewide requirements.

(c) The quota hunts shall be as follows:

1. Five (5) consecutive days beginning the second Saturday in November;

2. Five (5) consecutive days beginning the Thursday following the second Saturday in November.

3. The limit shall be one (1) deer.

4. Participants shall not be required to check in and out, but shall telecheck harvested deer as specified in 301 KAR 2:172.

(41) West Kentucky WMA.

(a) All tracts, except Tract 8A, shall be open under statewide requirements for the archery and crossbow seasons except that the areas shall be closed during quota and firearm deer hunts.

(b) Tracts 1-6 shall be open to shotgun and muzzleloader hunters participating in the quota and open firearm deer hunts. Tract 7 and "A" Tracts shall not be open for quota or firearm deer hunts.

(c) The quota hunt shall be for two (2) consecutive days beginning the third Saturday in November.

(d) 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 4 p.m. to 8 p.m. Central Time on the day before the hunt or between 4:30 a.m. and 7 p.m. Central Time on hunt days;

4. 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 centerfire[modern] rifles or handguns.

(f) A person shall not carry a firearm in posted zones.

(g) Archery [and crossbow] hunters shall check-in with U.S. Energy Corporation security personnel before hunting on the "A"

Tracts.

(h) Crossbow hunting is prohibited on the "A" tracts.

(i) A deer hunter shall not take an antlered deer with antlers having an outside spread of less than fifteen (15) inches.

(42)[(41)] Yatesville WMA. The crossbow, youth firearm, muzzleloader, and modern firearm seasons shall be open under statewide requirements, except a person shall not take antlerless deer with a firearm during the modern firearm deer season.

(43)[(b) The youth firearm seasons shall be open under statewide deer requirements.

(42)] Yellowbank WMA.

(a) The crossbow and youth firearm deer seasons shall be open under statewide requirements.

(b) A deer hunter shall not take an antlered deer with[whose] antlers having[have] an outside spread of less than fifteen (15) inches.

(44)[(43)] Zilpo Campground.

(a) The quota hunt shall be [for any deer] on the second Saturday in December for mobility impaired 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.

Section 7. State Park Deer Seasons. The following state parks shall be open to deer hunting as specified below and according to requirements in Section 8 of this administrative regulation:

(1) Lake Barkley State Resort Park. Deer hunting shall be permitted on the first[second] Tuesday of January for two (2) consecutive days.

(2) Dale Hollow Lake State Resort Park. Deer hunting shall be permitted on the fourth Fnday[Tuesday] of December for three (3)[four (4)] consecutive days.

(3) Greenbo Lake State Resort Park. Deer hunting shall be permitted on the first[second] Tuesday of January for two (2) consecutive days.

(4) Green River Lake State Park.

(a) Archery and crossbow deer hunting shall be permitted beginning the second Thursday of December for four (4) consecutive days; and

(b) Archery and crossbow deer hunting shall be permitted beginning the third Thursday of December for four (4) consecutive days.

(c) A deer hunter shall not take an antlered deer with antlers having an outside spread of less than fifteen (15) inches.

(5) Taylorsville Lake State Park.

(a) Deer hunting shall be permitted for two (2) consecutive days beginning the first Saturday and Sunday of November, and for two (2) consecutive days beginning the first Saturday and Sunday of December at Taylorsville Lake State Park.

(b) In odd-numbered years, the November hunt shall be open to any hunter, and the December hunt shall be open to mobility-impaired persons.

(c) In even-numbered years, the November hunt shall be open to mobility-impaired persons and the December hunt shall be open to any hunter.

(d) Persons who participate in the hunt held for mobility-impaired hunters shall comply with the requirements established in 301 KAR 3 026.

(6) Yatesville Lake State Park.

(a) Muzzleloading firearm, archery, and crossbow deer hunting shall be permitted under statewide deer requirements on the third[second] Monday of December for three (3) consecutive days.

(b) Check-in at the park campground gate is required from noon to 8 p.m. Eastern Time on the second Sunday of December.

(7) [Barren River Lake State Resort Park. Deer hunting shall be permitted on December 26 and 27.

(8)] Jenny Wiley State Resort Park.

(a) Deer[Muzzleloading firearm, archery, and crossbow deer] hunting shall be permitted on the first Saturday of January for two (2) consecutive days. The limit shall be one (1) deer.

(b) The hunt shall be open to the first fifteen (15) mobility-impaired persons to check in at the park on the day before the hunt[mobility impaired persons].

(c) Persons who participate in the hunt shall comply with the requirements established in 301 KAR 3.026.

(d) A deer hunter shall not take an antlered deer with antlers having an outside spread of less than fifteen (15) inches.

Section 8. State Park Deer Hunt Requirements. (1) Except for the open hunts[hunt] at Jenny Wiley State Resort Park and Yatesville Lake State Park, a person shall not hunt on a state park unless he or she:

(a) Was[Were][Was] selected by a random drawing as described in Section 3 of this administrative regulation[regulaiton]; or

(b) Is[Are][Is] a member of the successful applicant's hunting party.

(2) Check-in and check-out requirement.

(a) A person participating in a state park hunt, except for the quota hunts at [Barren River Lake State Resort Park,] Dale Hollow Lake State Resort Park and Green River Lake State Park, and Jenny Wiley State Resort Park and the Yatesville Lake State Park open deer hunts[hunt], shall:

1. Check in and check out as required in Section 5 of this administrative regulation;

2. Furnish at check-in:

a. Either his or her Social Security or confirmation number, showing that he or she was a successful applicant for the hunt; and

b. A driver's license or other form of government-issued identification; and

3. Check in between noon and 8 p.m. Eastern Standard Time the day before the hunt at the state park campground if hunting in the Yatesville Lake State Park open deer hunt, or at the park the day before the hunt if hunting in the Jenny Wiley State Resort Park open deer hunt.

(b) A person who does not check out as required above shall not be eligible to apply for a quota hunt the following year.

(3) A person participating in a state park deer hunt shall:

(a) Comply with the provisions of 301 KAR 2:172;

(b) Check deer daily at the designated park check station, unless specified in paragraph (c) of this section.

(c) Telecheck deer taken in the [Barren River Lake State Resort Park,] Dale Hollow Lake State Resort Park, and Green River Lake State Park quota hunts, and in the Jenny Wiley State Resort Park and in the Yatesville Lake State Park open deer hunts[hunt], as specified in 301 KAR 2:172.

(4) A person participating in a state park deer hunt shall not:

(a) Take more than two (2) deer in a quota hunt, only one (1) of which may be antlered;

(b) Hunt over bait;

(c) Injure a tree by using:

1. A tree stand except a portable stand;

2. Climbing devices which nail or screw to the tree; or

3. Climbing spikes.

(d) Leave a deer stand unattended for more than twenty-four (24) hours;

(e) Discharge a firearm within 100 yards of a maintained road or building;

(f) Hunt.

1. In an area posted as closed by signs; or

2. Outside [the] park boundaries.

MARK S. CRAMER, Deputy Commissioner
For DR. JONATHAN GASSETT, Commissioner
MARCHETTA SPARROW, Secretary
APPROVED BY AGENCY: March 7, 2008
FILED WITH LRC: April 2, 2008 at 3 p.m.
CONTACT PERSON. Rose Mack, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky 40601, phone (502) 564-3400, fax (502) 564-9136.

EDUCATION CABINET
Kentucky Board of Education
Department of Education
(As Amended at ARRS, June 10, 2008)

702 KAR 4:180. Implementation guidelines - Kentucky School Facilities Planning Manual.

RELATES TO: KRS 157.420(4), 157.620, 157.622

STATUTORY AUTHORITY: KRS 156.070, 157.420, 157.440

NECESSITY, FUNCTION, AND CONFORMITY: KRS 157.420(4) requires that the capital outlay allotment from the public school fund be used by school districts for capital outlay projects approved **District** by the Commissioner of Education[~~chief state school officer~~] in accordance with requirements of law and based on a survey made in accordance with administrative regulations of the Kentucky Board of Education. KRS 157.622 sets forth certain requirements for school facilities plans relative to participation in funding by the School Facilities Construction Commission. KRS 157.440 requires the Facility Support Program of Kentucky funds be used to address categorized priorities listed in the approved Facilities Plan pursuant to KRS 157.420. **KRS 156.070(4) authorizes the state board to prescribe administrative regulations for the efficient management, control, and operation of the schools and programs under its jurisdiction**[~~KRS 157.620 states construction needs shall be approved by the Kentucky Board of Education~~]. This administrative regulation provides for the development and adoption of a written district facilities plan by the school district describing **school centers and their status as permanent or transitional and** the current and proposed plan of school organizational structure, enrollment, and student capacity[~~, and school centers and their status as permanent or transitional~~] [~~construction and use of school facilities~~].

Section 1. A school district shall develop a local **District Facilities Plan** [~~facility plan~~] once every four (4) years in accordance with the schedule set by the Commissioner of Education[~~chief state school officer~~]. The Kentucky Board of Education shall approve the **District Facilities Plan**[~~facility plan~~] submitted by the district upon the recommendation of the Commissioner of Education[~~chief state school officer. A school district may request an amendment to its facility plan at other times during the four (4) year cycle~~].

Section 2. A **District Facilities Plan** [~~school district's facilities plan~~], and requested amendments thereto, shall be developed in accordance with the standards and hearing procedures contained in the "Kentucky School Facilities Planning Manual," June 2008[~~2004, and the "Master Educational Facility Plan Guidelines," June 2004~~].

Section 3. The **District Facilities Plan** [~~facilities plan~~] shall remain in effect until any changes have been approved by the Kentucky Board of Education.

Section 4. The adopted **District Facilities Plan**[~~facilities plan~~] shall become the facilities plan of the local school district and shall be implemented to the extent that the financial ability of the district [~~shall~~] **permits**[~~permit~~] as determined by the Commissioner of Education[~~chief state school officer~~] and the School Facilities Construction Commission. The scope of any construction project recommended in the **District Facilities Plan**[~~facilities plan~~] shall remain in effect until any changes have been approved by the Kentucky Board of Education.

Section 5. Incorporation by Reference. (1) [~~The following material is incorporated by reference.~~][~~(a)~~] "Kentucky School Facilities Planning Manual," dated June 10, 2008, **is incorporated by reference**[~~2004; and~~

~~(b) "Master Educational Facility Plan Guidelines," dated June 2004~~].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Education, Division of Facilities Management, 15th Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4.30 p.m.

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the Kentucky Board of Education, as required by KRS 156.070(4).

JON E. DRAUD, Commissioner
JOE BROTHERS, Chairperson

APPROVED BY AGENCY: April 8, 2008
FILED WITH LRC: April 9, 2008 at noon
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.

ADMINISTRATIVE REGULATIONS AMENDED AFTER PUBLIC HEARING OR RECEIPT OF WRITTEN COMMENTS

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department for Environmental Protection
Division of Water
(Amended After Comments)

401 KAR 9:010. Section 401 Individual Water Quality Certification public notice.

RELATES TO: KRS 224.01-010, 224.10-100, 224.16-050, 224.16-070, 350.060

STATUTORY AUTHORITY: KRS 224 16-050, 33 U.S.C. 1341

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.16-050 authorizes the cabinet to certify pursuant to 33 U.S.C. 1341 that applicants for a federal permit regarding the construction or operation of facilities, which may result in a discharge of dredged or fill material into the waters of the Commonwealth, as defined in KRS 224.01-010(33), shall comply with the applicable provisions of the Federal Water Pollution Control Act, 33 U.S.C. 1251 et seq. This administrative regulation establishes the procedures for public notice of Section 401, Individual Water Quality Certifications.

Section 1. Public Notice. (1) The cabinet shall give public notice of receipt of an administratively complete application for a Section 401 Individual Water Quality Certification.

(a) An administratively complete application shall contain the information necessary to allow a meaningful review of the project based on its merits.

1. An applicant for a project relating to surface mining coal operations shall submit the Application for Water Quality Certification for Surface Coal Mining Activities.

2. All other applicants seeking certification shall submit the Application for Permit to Construct Across or Along a Stream and/or Water Quality Certification.

(b) If an application is incomplete, a notice shall be sent to the applicant indicating the areas of the application that are deficient.

(2) Section 401 Individual Water Quality Certification public notices may describe more than one (1) certification or action and may be a part of other public notices under the Federal Water Pollution Control Act, 33 U.S.C. 1251 et seq.

Section 2. Methods. (1) The cabinet shall post public notices on its Web site; and

(2) The cabinet shall give public notice by one (1) of the following methods:

(a) By electronically mailing a copy of the notice to the following persons:

1. The applicant; and

2. All persons who have requested copies of Section 401 Individual Water Quality Certification public notices; or

(b) By mailing a copy of the notice to anyone listed in subsection (2)(a)2 of this section who has requested to be notified by standard mail.

Section 3. Content. A public notice shall contain at least the following information:

(1) The name and address of the applicant and, if different, the address or location of the activity regulated by the certification;

(2) The name, address, and telephone number of the applicant or applicant's representative to contact for further information;

(3) A brief description of the comment procedures, including deadlines;

(4) A brief description of the proposed activity and its purpose;

(5) The location of the waters of the Commonwealth affected by the proposed activity; and

(6) The location and availability of the application for public inspection.

Section 4. Public Comment. (1) The public comment period shall expire thirty (30) days from the date of the public notice.

(2) The cabinet shall consider comments prior to making a final determination on a certification.

Section 5. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Application for Water Quality Certification for Surface Coal Mining Activites", Form DNR-WQC, February 2008.

(b) "Application for Permit to Construct Across or Along a Stream and/or Water Quality Certification", June 2008 [~~January 2004~~].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Water, 14 Reilly Road, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4 30 p.m.

HANK LIST, Deputy Secretary
For ROBERT D. VANCE, Secretary
APPROVED BY AGENCY: June 12, 2008
FILED WITH LRC: June 13, 2008 at 10 a.m.
CONTACT PERSON: Abigail Powell, Regulations Coordinator, Division of Water, 14 Reilly Road, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Sandy Gruzesky

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes procedures for Section 401 Individual Water Quality Certification public notice.

(b) The necessity of this administrative regulation: 33 U.S.C. sec. 1341 requires that states establish procedures for 401 certification public notice.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 224.16-050 authorizes the cabinet to certify pursuant to 33 U S.C. sec. 1341 that applicants for a federal permit for the construction or operation of facilities which may result in a discharge into the waters of the Commonwealth will comply with the applicable provisions of the Federal Water Pollution Control Act. This administrative regulation establishes the procedures for public notice of Section 401 Individual Water Quality certifications.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes:
There is currently no regulation governing 401 certification public notice. This will establish procedures for public notice.

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

(a) How the amendment will change this existing administrative regulation: Not applicable.

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Cabinet processed approximately 228 individual certifications during the year 2007. This included work proposed by federal government six (6), state government forty-five (45), city/county governments fifteen (15), industrial, commercial, and residential developers ninety (90), coal industry (53), urban and rural residents fifteen (15), and others five (5).

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Public notice provisions will be imple-

mented by the cabinet. No additional actions are necessary on the part of the applicant.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3) There will be no additional costs to the entity associated with this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Potentially impacted individuals, businesses, organizations, and governments will be notified of an applicant's request for 401 certification.

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

(a) Initially: The costs associated with this administrative regulation will be minimal and absorbed by the agency.

(b) On a continuing basis: The costs associated with this administrative regulation will be minimal and absorbed by the agency.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation? The costs associated with this administrative regulation will be minimal. Existing funding is a combination of state general fund dollars and federal Clean Water Act Water Pollution Control grant funds

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: There will not be an increase in fees associated with this administrative regulation.

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

(9) TIERING: Is tiering applied? No. Public notice is required for each applicant for an individual 401 water quality certification.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Each applicant will be required to provide public notice of their application for 401 certification.

3 Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. 33 U S C. 1341 requires that states establish procedures for 401 certification public notice. KRS 224.16-050 and 224.16-070 authorize the cabinet to certify pursuant to 33 U.S.C. 1341 that applicants for a federal permit for the construction or operation of facilities which may result in a discharge into the waters of the Commonwealth will comply with the applicable provisions of the Federal Water Pollution Control Act This administrative regulation establishes the procedures for public notice of Section 401 Individual Water Quality certifications.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? Revenue will not be generated from the implementation of this administrative regulation.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? Not applicable

(c) How much will it cost to administer this program for the first year? The costs associated with this administrative regulation will be minimal and absorbed by the agency.

(d) How much will it cost to administer this program for subsequent years? The costs associated with this administrative regulation will be minimal and absorbed by the agency.

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

Revenues (+/-):
Expenditures (+/-):
Other Explanation:

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate.
33 U.S.C. 1341 requires that states establish procedures for 401 certification public notice.

2. State compliance standards. KRS 224.16-050 and 224.16-070 authorize the cabinet to certify pursuant to 33 U.S.C. 1341 that applicants for a federal permit for the construction or operation of facilities which may result in a discharge into the waters of the Commonwealth will comply with the applicable provisions of the Federal Water Pollution Control Act

3. Minimum or uniform standards contained in the federal mandate. 33 U.S.C. 1341 requires states establish procedures for public notice in the case of all applications for certification. No specific standards are provided in 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 standard, or additional or different responsibilities or requirements. Not applicable

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department for Environmental Protection
Division of Water
(Amended After Comments)

401 KAR 9:020. Section 401 Water Quality Certification fees and certification timetable.

RELATES TO: KRS Chapter 224, 350.060
STATUTORY AUTHORITY: KRS 224.10-100, **224.10-220,** 224.16-050, 33 U S C. 1341
NECESSITY, FUNCTION, AND CONFORMITY: KRS 224 10-100 authorizes the cabinet to establish a fee for the cost of processing applications for permits authorized under KRS Chapter 224 **KRS 224.10-220 requires the cabinet to establish timetables for the issuance of permits.** KRS 224.16-050 authorizes the cabinet to certify, pursuant to 33 U S C. 1341, that applicants for a federal permit for the construction or operation of facilities which may result in a discharge into the waters of the Commonwealth will comply with the applicable provisions of the Federal Water Pollution Control Act, 33 U.S.C. 1251. This administrative regulation establishes fees **and a certification timetable** for processing applications for Section 401 Water Quality Certifications.

Section 1. Definitions. (1) **"Agriculture operation" is defined by KRS 224.71-100(1).** [~~"Family farm" means one (1) or more tracts of land, used for agricultural purposes, that are held in private ownership by one (1) or more people related by birth or marriage.~~]

(2) "Natural person" means an individual distinguished from a person as defined in KRS 224.01-010.

(3) "Personal residence" means a natural person's primary place of abode.

Section 2. Fee Remittance. Fees for water quality certifications shall be remitted to the Kentucky State Treasurer, which shall be for the sole use of the cabinet in administration for the 401 water quality certification program and shall be in addition to any money appropriated by the General Assembly for the use of the cabinet.

Section 3. Fees for Individual Water Quality Certification for Stream Impacts. Fees for the review of individual water quality certification **applications** for stream impacts shall be as follows:

(1) $100 for an impact of less than 100 linear feet,

(2) $250 for an impact of 100 to 500 linear feet,
(3) $1,000 for an impact greater than 500 but less than 1,000 linear feet;
(4) $2,500 for an impact of 1,000 to 5,000 linear feet; and
(5) $5,000 for an impact greater than 5,000 linear feet.

Section 4. Fees for Individual Water Quality Certification for Wetland Impacts. (1) Fees for the review of individual water quality certification for wetland impacts shall be $500 per acre of impacted wetland.

(2) The fee charged for review of individual water quality certification for wetland impacts shall not exceed $5,000.

Section 5. Exemptions. The following shall be exempt from Section 401 certification fees:
(1) Applications for Section 401 general water quality certifications;
(2) Agriculture operations; and
(3) Personal residences.

Section 6. Timetable for Review of Section 401 Water Quality Certifications.
(1) The cabinet shall issue its final decision on a certification application within 120 calendar days after receipt of a complete application, pursuant to 401 KAR 9:010, Section 1(1), except as provided in subsection (3) of this section.
(2) Within thirty (30) calendar days of initial receipt of an application for a section 401 water quality certification, the cabinet shall issue a notice of deficiency if the application is not complete.
(3) Timetable exclusions. Time periods that shall not be counted towards the cabinet review schedule referenced in subsection (1) of this section include:
(a) Time waiting for the applicant to respond to a notice of deficiency;
(b) Time during which the certification, application, decision, or related matter is the subject of litigation, including administrative hearings or court proceedings, between the cabinet and the applicant;
(c) The public notice period set forth in 401 KAR 9:010;
(d) Time waiting for Section 401 Water Quality Certification fees to be paid after the cabinet's certification decision regarding the application is made; and
(e) Other times as agreed to by the applicant and the cabinet. ~~[Section 5. Fees for General Water Quality Certification. (1) Fees for the review of general water quality certification shall be $100.~~
~~(2) Family farms and personal residences shall be exempt from general water quality certification fees.]~~

HANK LIST, Deputy Secretary
For ROBERT D. VANCE, Secretary
APPROVED BY AGENCY. June 12, 2008
FILED WITH LRC: June 13, 2008 at 10 a.m.
CONTACT PERSON: Abigail Powell, Regulations Coordinator, Division of Water, 14 Reilly Road, Frankfort, Kentucky 40601, phone (502) 564-3410, fax (502) 564-0111.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Sandy Gruzesky, Assistant Director
(1) Provide a brief summary of:
(a) What this administrative regulation does: This regulation creates cost-based fees for Section 401 water quality certifications that previously did not have fees.
(b) The necessity of this administrative regulation: The Kentucky 401 Water Quality Certification program is currently operating at a significant monetary loss due to no permitting fees The 401 Water Quality Certification Section operates well below optimum staffing levels as a partial result of this shortfall. As a result of this shortfall in economic and human resources, the Division accumulated a significant backlog. This backlog results in increased scrutiny by Federal regulators and leads to processing times that barely meet, or exceed, the regulatory periods expected for review.
(c) How this administrative regulation conforms to the content of the authorizing statutes:
KRS 224.10-100(20) authorizes the cabinet to establish a fee for the cost of processing applications for permits authorized under KRS Chapter 224. KRS 224.10-220 requires the Cabinet to establish timetables for the issuance of permits KRS 224.16-050 authorizes the cabinet to certify pursuant to 33 U.S.C. 1341 that applicants for a federal permit for the construction or operation of facilities which may result in a discharge into the waters of the Commonwealth will comply with the applicable provisions of the Federal Water Pollution Control Act, 33 U.S C. 1251-1387. The cabinet analyzed the actual costs associated with the review of the water quality certifications and is proposing a fee structure that represents the current actual cost for review. The costs are calculated for each application class on a specific basis utilizing recent data to project the actual numbers for each type of certification. The cabinet believes that KRS 224.10-100(20) prevents the collection of fees from public facilities. Therefore, no attempt to collect or transfer the cost of review for public facilities is included in this regulation.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes:
This regulation delineates fees for certain categories of Section 401 water quality certifications for which a fee may be charged. The cabinet is charged with the responsibility of reviewing these certifications; therefore, the cabinet must have monetary resources with which to accomplish this mission. One source of funding is certification application fees. These fees will partially support the cabinet in its attraction and retention of the staff necessary to implement the statutes.
(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: Amendment is not applicable. This is a new administrative regulation.
(b) The necessity of the amendment to this administrative regulation: Not applicable.
(c) How the amendment conforms to the content of the authorizing statutes: Not applicable.
(d) How the amendment will assist in the effective administration of the statutes: Not applicable.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The cabinet processed approximately 228 individual certifications during the year 2007. This included work proposed by federal government (6), state government (45), city/county governments (15), industrial, commercial, and residential developers (90), coal industry (53), urban and rural residents (15), and others (5).
(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:
(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The regulated entities will have to pay a cost-based fee for water quality certification issuance.
(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3):
- Individual Water Quality Certification for Stream Impacts (only):
Activities that do not qualify for a General Water Quality Certification are assessed water quality certification review fees in the following manner:
The water quality review fee for less than 100 linear feet of impact is $100.
The water quality review fee for 100 to 500 linear feet of impact is $250.
The water quality review fee for greater than 500 but less than 1,000 linear feet of impact is $1,000.
The water quality review fee for greater than 1000 but less than 5,000 linear feet of impact is $2,500.
The water quality review fee for impacts 5,000 linear feet or greater is $5,000.

- Individual Water Quality Certification for Wetland Impacts (only):

The water quality review fee for impacts to wetlands is $500 per acre of impacted wetland, not to exceed $5,000.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The current processing delays for water quality certifications are largely a result of inadequate funding for the 401 Water Quality Program. This backlog results in increased scrutiny by Federal regulators of both the regulated entities and of the cabinet. This regulation will provide increased funding for the cabinet and the 401 Water Quality Certification Program in particular. An increase in economic and human resources for the cabinet will lead to a reduction in the time needed for the regulated entities to obtain the water quality certifications necessary to conduct business. Kentucky's fee structure will remain competitive for attracting industry. Fees for industry are still below those in most states, such as Illinois, Virginia, Ohio, and Indiana Additionally, the fees imposed on small businesses and individuals will be comparable to those in surrounding states.

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

(a) Initially: Minimal additional burden is anticipated. The cabinet will alter existing mechanisms that are already in place to collect and process water quality certification fees

(b) On a continuing basis: o additional burden is anticipated. An existing mechanism is in place for collection of fees.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation? Funding will come from the fees generated by the water quality certification application.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation will establish fees for the program.

(9) TIERING. Is tiering applied? Yes, tiering of fees is applied by this administrative regulation. This tiered structure regulates cost-based fees for water quality certifications based upon the linear feet of stream impacts and acres of wetland impacts.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Water Quality Branch/Water Quality Certification Section processed approximately 175 individual certifications during the year 2007. Of these certifications, 6 were for federal government work, 45 were for state government work, and 15 were for city/county governments. Any applicant seeking Section 401 individual water quality certification will be affected.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 224.10-100 authorizes the cabinet to establish a fee for the cost of processing applications for permits authorized under KRS Chapter 224. KRS 224.16-050 authorizes the cabinet to certify pursuant to 33 U.S C. 1341 that applicants for a federal permit for the construction or operation of facilities which may result in a discharge into the waters of the Commonwealth will comply with the applicable provisions of the Federal Water Pollution Control Act, 33 U.S.C. 1251.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The average revenue expected from the administrative regulation will be $392,000 per year for DOW and approximately $140,600 for DMP.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The average revenue expected from the administrative regulation will be $392,000 to $450,000 per year for DOW and approximately $138,600 for DMP. This will vary be based on the actual number and type of water quality certification received.

(c) How much will it cost to administer this program for the first year? Based on an average of 200 permits per year, the cost to administer this program will be $470,000 for the first year. The Division of Mine Permits estimates a cost of $160,200 for the first year.

(d) How much will it cost to administer this program for subsequent years? The average cost to administer this program in subsequent years will be $470,000 to $550,000 per year for DOW and $160,200 for DMP. This will vary be based on the actual number and type of water quality certification received.

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department for Environmental Protection
Division of Waste Management
(Amended After Comments)

401 KAR 32:050. Special conditions.

RELATES TO: KRS Subchapters 224.01, 224.10, 224.40, 224.46, 224.99, 40 C.F.R. 260.2, 262 Subparts E, F, 262.54(h), 262.58, 263.20(g)(4)

STATUTORY AUTHORITY: KRS 224.10-100, 224.46-510

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.46-510(1) requires the Environmental and Public Protection Cabinet to promulgate administrative regulations to establish requirements relating to generators of hazardous waste. This administrative regulation establishes procedures to implement provisions of KRS 224.46-510 and to establish special conditions for generators who export or import hazardous waste. This administrative regulation is equivalent to corresponding federal requirements except an annual report is required rather than a biennial report.

Section 1. Definitions. The following definitions **apply** ~~[apply]~~ to Sections 2 through 9 of this administrative regulation:

(1) "Administrator" is defined by 40 C.F.R. 260.10.

(2) "Consignee" means the ultimate treatment, storage, or disposal facility in a receiving country to which the hazardous waste will be sent.

(3) "Environmental Protection Agency" or "EPA" means[:

~~(a) The Kentucky Division of Waste Management in Sections 2, 3, 6, 8, and 9 of this administrative regulation; or~~

~~(b)~~] the federal Environmental Protection Agency in Sections 4 and 5[~~, 5, 7, and 10~~] of this administrative regulation.

(4) "EPA Acknowledgement of Consent" means the cable sent to EPA from the U S Embassy in a receiving country that acknowledges the written consent of the receiving country to accept the hazardous waste and describes the terms and conditions of the receiving country's consent to the shipment.

(5)[~~(3)~~] "Federal Register" means the official daily publication for regulations, proposed regulations, and notices of federal agencies and organizations, as well as executive orders and other presidential documents.

(6) "Primary exporter" means any person who is required to originate the manifest for a shipment of hazardous waste in accordance with 40 C F R. Part 262, which specifies a treatment, storage, or disposal facility in receiving country as the facility to which the hazardous waste will be sent any intermediary arranging for the export.

(7) "Receiving country" means a foreign country to which a hazardous waste is sent for the purpose of treatment, storage, or disposal.

(8)[~~(4)~~] "Regional administrator" is defined by 40 C.F.R. 260.10.

(9) "Transit country" means any foreign country, other than a receiving country, through which a hazardous waste is transported.

(10)[~~(5)~~] "United States" is defined by 40 C.F.R. 260.10.

Section 2. Applicability. The subject matter shall be governed by 40 C.F.R. 262.50, effective July 1, 2005.

Section 3. General Requirements. The subject matter shall be governed by 40 C.F.R. 262.52, effective July 1, 2005.

Section 4. Notification of Intent to Export. The subject matter shall be governed by 40 C.F R. 262.53, effective July 1, 2005.

Section 5. Special Manifest Requirements. The subject matter shall be governed by 40 C.F.R. 262.54, effective September 9, 2005.

Section 6. Exception Reports. The subject matter shall be governed by 40 C.F.R. 262.55, effective July 1, 2005.

Section 7. Annual Reports. (1) Except as provided in subsection (2) of this section, the subject matter shall be governed by 40 C.F.R. 262.56, effective July 1, 2005.

(2) In addition to the requirements referenced in subsection (1) of this section, the annual report shall also be sent to the cabinet.

Section 8. Recordkeeping. The subject matter shall be governed by 40 C F R. 262.57, effective July 1, 2005.

Section 9. International Agreements. The subject matter shall be governed by 40 C.F.R. 262.58, effective July 1, 2005.

Section 10. Imports of Hazardous Waste The subject matter shall be governed by 40 C.F.R. 262.60, effective September 9, 2005.

HANK LIST, Deputy Secretary
For ROBERT D. VANCE, Secretary
APPROVED BY AGENCY: June 12, 2008
FILED WITH LRC. June 13, 2008 at 10 a.m
CONTACT PERSON: Anthony R. Hatton, Assistant Director, Division of Waste Management, 14 Reilly Road, Frankfort, Kentucky 40601, phone (502) 564-6716, fax (502) 564-4049, email Tony.Hatton@ky gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Anthony R. Hatton, Assistant Director

(1) Provide a bnef summary of·

(a) What this administrative regulation does: This administrative regulation establishes procedures to implement provisions of KRS 224.46-510 and to establish special conditions for generators who export or import hazardous waste.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to detail the special conditions for import and export of hazardous waste

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the authorizing statutes by further clarifying the intent of the statue regarding generation of hazardous waste and importing and exporting those wastes.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists the statute by detailing the special conditions for import and export of hazardous waste.

(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 corrects a misspelling of the word apply in Section 1.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to correct a typo in Section 1.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the authorizing statutes by correcting the typo in Section 1.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation assists the statute by correcting a misspelled word.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect generators in the Commonwealth of Kentucky. There are 2604 generators in Kentucky They are broken down into the following groups· 300 large quantity generators, 421 small quantity generators and 1,883 conditionally exempt small quantity generators.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including: There are no substantive changes to regulatory requirements associated with this administrative regulation.

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No additional actions are required as part of this amendment.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): It will not cost additional money to comply with this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3)· There are no benefits because there are not additional actions to take.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation: There will be no costs associated with the implementation of this administrative regulation.

(a) Initially: N/A

(b) On a continuing basis: N/A

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Implementation and enforcement of this administrative regulation would be achieved by a combination of general funds and grants from the federal Environmental Protection Agency.

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

(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 fees.

(9) TIERING: Is tiering applied? No tiering is applied. This administrative regulation applies to all entities who generate, transport, or store hazardous waste. To apply tiering to the regulation would unduly regulate some entities while not regulating others.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will impact any units of state or local government that generate hazardous waste.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. This administrative regulation establishes procedures to implement provisions of KRS 224.46-510 and to establish special conditions for generators who export or import hazardous waste.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. This regulation will not effect expenditures or revenues.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This regulation will not generate any revenue.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties,

fire departments, or school districts) for subsequent years? This regulation will not generate any revenue.

(c) How much will it cost to administer this program for the first year? No costs are associated with this regulation.

(d) How much will it cost to administer this program for subsequent years? No costs are associated with this regulation.

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

Revenues (+/-): N/A
Expenditures (+/-). N/A
Other Explanation: N/A

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 40 C.F.R. 262 Subparts E and F.

2. State Compliance Standards. KRS 224.10-100, 224.46-505, 224.46-510, and 224.46-530.

3. Minimum or uniform standards contained in the federal mandate. 40 C.F.R. 262 Subparts E and F.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. This administrative regulation does not impose stricter, additional, or different requirements or responsibilities than those required by the federal regulation.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements N/A

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department for Environmental Protection
Division of Waste Management
(Amended After Comments)

401 KAR 34:080. General financial requirements.

RELATES TO: KRS 224.10, 224.40, 224.46, 40 C.F.R. 264 Subpart H

STATUTORY AUTHORITY: KRS 224.46-505, 224 46-520

NECESSITY, FUNCTION, AND CONFORMITY: To implement provisions of KRS 224.46-505 and 224.46-520 and to establish general financial requirements. Additionally, this administrative regulation supersedes and replaces the following: 401 KAR 34 140, Wording of the instruments for trust funds; 401 KAR 34 144, Wording of the instrument for a surety bond guaranteeing payment into a trust fund; 401 KAR 34:148, Wording of the instrument for a surety bond guaranteeing performance, 401 KAR 34.152, Wording of the instrument for a letter of credit; 401 KAR 34:156, Wording of the instrument for a certificate of insurance; 401 KAR 34.159, Wording of the instrument for financial test on closure or postclosure care, 401 KAR 34:162, Wording of the instrument for financial test on liability coverage and closure or postclosure care, 401 KAR 34.165, Wording of the instrument for a corporate guarantee; 401 KAR 34:168, Wording of the instrument for a cash account or certificate of deposit; 401 KAR 34.172, Wording of the instrument for a liability endorsement; and 401 KAR 34:176, Wording of the instrument for a certificate of liability insurance.

Section 1. Financial Requirement Definitions. The definitions previously found in this section have been relocated to the definition administrative regulation for this chapter, which is 401 KAR 34.005.

Section 2. Applicability. (1) The requirements of 401 KAR 34 090 to 401 KAR 34:130 apply to owners and operators of all hazardous waste sites or facilities, except as provided otherwise in this section or in 401 KAR 34 010, Section 1.

(2) The requirements of 401 KAR 34:100 and 34.110 apply only to owners and operators of:

(a) Disposal facilities;

(b) Waste piles, and surface impoundments from which the owner or operator intends to remove the wastes at closure, to the extent that these sections are made applicable to such facilities in 401 KAR 34:200, Section 6(1)(b), (2) and (3), and 34:210, Section 8(2) and (3),

(c) Tank systems that are required under Section 8 of 401 KAR 34.190 to meet the requirements of landfills;

(d) Containment buildings that are required under 401 KAR 34.245, Section 2 to meet the requirements for landfills; and

(e) Drip pads that are required under 401 KAR 34.285, Section 6 to meet the requirements for landfills.

(3) States and the federal government are exempt from the requirements of Section 1 of this administrative regulation.

(4) The cabinet may replace all or part of the requirements of this administrative regulation applying to a regulated unit with alternative requirements for financial assurance set out in the permit or in an enforceable document where the cabinet:

(a) Prescribes alternative requirements for the regulated unit under 401 KAR 34:060, Section1, or 401 KAR 34 070, Section 1; [and]

(b) Determines that it is not necessary to apply the requirements of this administrative regulation because the alternative financial assurance requirements will protect human health and the environment; **and**

(c) Provides for public notice and public comment in accordance with 401 KAR 38:050.

Section 3. General Financial Requirements. (1) This administrative regulation and 401 KAR 34:090 to 34:130 inclusively contain the financial requirements to establish adequate financial responsibility as required by KRS 224.46-520(3) for hazardous waste sites or facilities. A reference to this section is a citation of this administrative regulation and 401 KAR 34:090 to 34:130.

(2) Except as specifically provided in this administrative regulation and 401 KAR 34.090 to 34:130, no variance (401 KAR 30:020, Section 2) or other waivers of these financial requirements shall be granted by the cabinet.

Section 4. Financial Instruments. (1) Incorporated herein by reference are:

(a) Trust Agreement for Closure and Postclosure Assurance, DEP Form 6035A (February 10, 1994);

(b) Financial Guarantee Bond to Demonstrate Closure and/or Postclosure Care, DEP Form 6035B (February 10, 1994);

(c) Corporate Guarantee for Closure or Postclosure Care, DEP Form 6035H1 (February 10, 1994),

(d) Letter from Chief Financial Officer to Demonstrate Assurance of Closure or Postclosure Care, DEP Form 6035F (February 10, 1994);

(e) Irrevocable Standby Letter of Credit for Closure and/or Postclosure Care, DEP Form 6035D (February 10, 1994),

(f) Escrow Agreement to Demonstrate Closure and/or Postclosure Care, DEP Form 6035J (February 10, 1994);

(g) Hazardous Waste Site or Facility Bond to Demonstrate Closure and/or Postclosure Care, DEP Form 6035I (February 10, 1994);

(h) Performance Bond to Demonstrate Closure and/or Postclosure Care, DEP Form 6035C (February 10, 1994);

(i) Letter from Chief Financial Officer to Demonstrate Liability Coverage or to Demonstrate Both Liability Coverage and Assurance of Closure or Postclosure Care, DEP Form 6035G (February 10,1994);

(j) Corporate Guarantee for Liability Coverage, DEP Form 6035H2 (February 10, 1994);

(k) Hazardous Waste Facility Liability Endorsement, DEP Form 6035K (February 10, 1994);

(l) Hazardous Waste Facility Certificate of Liability Insurance, DEP 6035L (February 10, 1994);

(m) Certificate of Insurance for Closure or Postclosure Care, DEP Form 6035E (February 10, 1994);

(n) Irrevocable Standby Letter of Credit To Demonstrate Liability Coverage with Standby Trust Agreement, DEP Form 6035N (February 10, 1994);

(o) Standby Trust Agreement for Letter of Credit Demonstrating Liability Coverage, DEP Form 6035R (February 10, 1994);

(p) Payment Bond to Demonstrate Liability Coverage, DEP Form 6035O (February 10, 1994);

(q) Trust Agreement to Demonstrate Liability Coverage, DEP Form 6035P (February 10, 1994);

(r) Irrevocable Standby Letter of Credit to Demonstrate Liability Coverage, DEP Form 6035Q (February 10, 1994), and

(s) Cover Letter for a Letter of Credit for Closure and/or Post-closure Care, DEP Form 6035S (July 1996).

(2) These forms may be obtained from the Hazardous Waste Branch, Division of Waste Management, 14 Reilly Road, Frankfort, Kentucky 40601, between the hours of 8 a m. and 4:30 p.m., Monday through Friday. Call (502) 564-6716 for assistance.

HANK LIST, Deputy Secretary
For ROBERT D. VANCE, Secretary
APPROVED BY AGENCY: June 12, 2008
FILED WITH LRC: June 13, 2008 at 10 a m
CONTACT PERSON: Anthony R. Hatton, Assistant Director, Division of Waste Management, 14 Reilly Road, Frankfort, Kentucky 40601, phone (502) 564-6716, fax (502) 564-4049, email Tony.Hatton@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Anthony R. Hatton, Assistant Director

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the general financial requirements for hazardous waste facilities.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish general financial requirements for hazardous wastes facilities.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the authorizing statutes by establishing general financial requirements for hazardous waste facilities.

(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 general financial requirements for hazardous waste 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: The amendment updates the language in section 2(4) to be consistent with the federal language, and requires public notice of alternative financial mechanisms

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to update the regulations to remain consistent with federal regulations.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the authorizing statutes by updating the general financial requirements for hazardous waste facilities.

(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 updating the general financial requirements for hazardous waste facilities.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect hazardous waste treatment, storage, and disposal facilities.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including: There are no substantive changes to regulatory requirements associated with this administrative regulation.

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Regulated entities will not be required to perform any additional actions for this amendment.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no cost because there are no additional requirements.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): There will be no accrual of benefits.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation: There will be no costs associated with the implementation of this administrative regulation.

(a) Initially: N/A

(b) On a continuing basis: N/A

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Implementation and enforcement of this administrative regulation would be achieved by a combination of general funds and grants from the federal Environmental Protection Agency.

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

(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 fees.

(9) TIERING: Is tiering applied? No tiering is applied. This administrative regulation applies to all entities who treat, store, or dispose of hazardous waste. To apply tiering to the regulation would unduly regulate some entities while not regulating others

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will impact any units of state or local government that treat, store, or dispose of hazardous wastes.

3 Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 224.46-520 requires the cabinet to establish standards for permits, to require adequate financial responsibility, and to establish minimum standards for closure for all hazardous waste facilities. This administrative regulation establishes the general financial requirements for hazardous waste facilities.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. This regulation will not affect expenditures or revenues.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This regulation will not generate any revenue

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This regulation will not generate any revenue.

(c) How much will it cost to administer this program for the first year? No costs are associated with this regulation.

(d) How much will it cost to administer this program for subsequent years? No costs are associated with this regulation.

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

Revenues (+/-): N/A
Expenditures (+/-): N/A
Other Explanation: N/A

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 40 C.F.R. 264 Subpart H.

2. State Compliance Standards. KRS 224.10-100, 224.46-505,

224.46-520, and 224.46-530.

3. Minimum or uniform standards contained in the federal mandate. 40 C.F.R. 264 Subpart H.

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.

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department for Environmental Protection
Division of Waste Management
(Amended After Comments)

401 KAR 35:080. General financial requirements (IS).

RELATES TO: KRS 224.10, 224.40, 224.43,224.46, 224.99, 40 C.F.R. 265 Subpart H

STATUTORY AUTHORITY: KRS 224.10-100, 224.46-520

NECESSITY, FUNCTION, AND CONFORMITY: To implement provisions of KRS 224.46-520 and to establish general financial requirements for sites or facilities qualifying for interim status.

Section 1. Financial Requirement Definitions. The definitions previously found in this section have been relocated to the definition administrative regulation for this chapter, which is 401 KAR 35 005.

Section 2. Applicability. (1) The requirements of 401 KAR 35:090, 401 KAR 35:120 and 401 KAR 35.130 apply to owners or operators of all hazardous waste sites or facilities, except as provided otherwise in this section or in Section 1 of 401 KAR 35 010.

(2) The requirements of 401 KAR 35:100 and 35:110 apply only to owners and operators of:

(a) Disposal facilities;

(b) Tank systems that are required under Section 5 of 401 KAR 35:190 to meet the requirements for landfills; and

(c) Containment buildings that are required under Section 3 of 401 KAR 35:245 to meet the requirements of landfills.

(d) Drip pads that are required under Section 6 of 401 KAR 35.285.

(3) States and the federal government are exempt from the requirements of Section 1 of this administrative regulation.

(4) The cabinet may replace all or part of the requirements of this administrative regulation applying to a **regulated unit with alternative requirements for financial assurance set out in the permit or in an** enforceable document where the cabinet:

(a) Prescribes alternative requirements for the regulated unit under 401 KAR 35.060, Section1, or 401 KAR 35:070, Section 1; ~~[and]~~

(b) Determines that it is not necessary to apply the requirements of this administrative regulation because the alternative financial assurance requirements will protect human health and the environment; and

(c) Provides for public notice and public comment in accordance with 401 KAR 38:050.

Section 3. General Financial Requirements. (1) This administrative regulation and 401 KAR 35:090 to 35:130, inclusively, contain the financial requirements to establish adequate financial responsibility for interim status facilities as required by KRS 224.46-520(3) for hazardous waste sites or facilities. A reference to this section is a citation of this administrative regulation and 401 KAR 35.090 to 35:130.

(2) Except as specifically provided in this administrative regulation and 401 KAR 35:090 to 35:130, no variance (401 KAR 30 020, Section 2) or other waivers of these financial requirements shall be granted by the cabinet.

HANK LIST, Deputy Secretary
For ROBERT D. VANCE, Secretary
APPROVED BY AGENCY: June 12, 2008

FILED WITH LRC: June 13, 2008 at 10 a m.

CONTACT PERSON: Anthony R. Hatton, Assistant Director, Division of Waste Management, 14 Reilly Road, Frankfort, Kentucky 40601, phone (502) 564-6716, fax (502) 564-4049, email Tony.Hatton@ky gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Anthony R. Hatton, Assistant Director

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the general financial requirements for hazardous waste facilities with interim status.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the general financial requirements for hazardous waste facilities with interim status.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the authorizing statutes by establishing the general financial requirements for hazardous waste facilities with interim status.

(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 the general financial requirements for hazardous waste facilities with interim status.

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

(a) How the amendment will change this existing administrative regulation: The amendment updates the language in Section 2(4) to be consistent with the federal language, and requires public notice of alternative financial mechanisms.

(b) The necessity of the amendment to this administrative regulation. This amendment is necessary to remain consistent with federal regulations.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the authorizing statutes by updating the general financial requirements for hazardous waste facilities with interim status.

(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 updating general financial requirements for hazardous waste facilities with interim status.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect hazardous waste facilities.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including: There are no substantive changes to regulatory requirements associated with this administrative regulation.

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: There are no additional requirements for regulated entities in the amendment.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There are no costs because there are no additional requirements.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): There is no accrual of benefits.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation: There will be no costs associated with the implementation of this administrative regulation.

(a) Initially: N/A

(b) On a continuing basis: N/A

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Implementation and enforcement of this administrative regulation would be achieved by a combination of general funds and grants from the federal Environmental Protection Agency.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation,

if new, or by the change if it is an amendment: There is no need for an increase in funding or fees to implement this amendment.

(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 fees.

(9) TIERING: Is tiering applied? No tiering is applied. This administrative regulation applies to all entities who treat, store, or dispose of hazardous waste. To apply tiering to the regulation would unduly regulate some entities while not regulating others.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will impact any units of state or local government that treat, store, or dispose of hazardous wastes.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 224.46-520 requires the cabinet to establish standards for permits, to require adequate financial responsibility, and to establish minimum standards for closure for all hazardous waste facilities. This administrative regulation establishes the general financial requirements for hazardous waste facilities with interim status.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. This regulation will not affect expenditures or revenues.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This regulation will not generate any revenue.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This regulation will not generate any revenue.

(c) How much will it cost to administer this program for the first year? No costs are associated with this regulation.

(d) How much will it cost to administer this program for subsequent years? No costs are associated with this regulation.

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

Revenues (+/-): N/A
Expenditures (+/-): N/A
Other Explanation: N/A

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 40 C.F.R. 265 Subpart H.

2. State Compliance Standards. KRS 224.10-100, 224.46-505, 224.46-520, and 224.46-530.

3. Minimum or uniform standards contained in the federal mandate. 40 C.F.R. 265 Subpart H.

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.

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department for Environmental Protection
Division of Waste Management
(Amended After Comments)

401 KAR 37:005. Definitions for 401 KAR Chapter 37.

RELATES TO: KRS Subchapters 224.01, 224.10, 224 46, 40 C.F.R. 260.10, 268.2

STATUTORY AUTHORITY: KRS 224.10-100, 224.46-505, 224 46-520

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100(30) authorizes the Environmental and Public Protection Cabinet to promulgate administrative regulations. This administrative regulation defines essential terms that are used in 401 KAR Chapter 37. Some federal terms have been modified to conform to Kentucky statutory mandates. Definitions contained in KRS Chapter 224 have been referenced to the appropriate statutory citation. Some terms do not have a federal counterpart and have been added to clarify requirements and provisions of KRS Chapter 224 and 401 KAR Chapter 37.

Section 1. Definitions. Except as provided in this section, the definitions established in 40 C.F.R. 260.10, effective September 9, 2005, shall apply.

(1) "Administrator", "agency", "assistant administrator", "regional administrator", "director", or "regional director" means cabinet as defined in KRS 224.01-010(9).

(2) "Application" means the form approved by the cabinet for applying for a permit, including any additions, revisions or modifications and any narrative and drawings required by 401 KAR Chapters 30 to 48 and includes Part A of the application (Part A), Part B of the application (Part B), notice of intent, administration application, special waste application, or technical application.

(3) "Burn" means burning for energy recovery or destruction, or processing for materials recovery or as an ingredient.

(4) "Cabinet" is defined by KRS 224.01-010(9).

(5) "Debris" **is defined by 40 C.F.R. 268.2(g)** ~~[means solid material exceeding a 60mm particle size that is intended for disposal and that is: A manufactured object; or plant or animal matter; or natural geologic material. However, the following materials are not debris: any material for which a specific treatment standard is provided in 401 KAR Chapter 37, namely lead acid batteries, cadmium batteries, and radioactive lead solids; process residuals such as smelter slag and residues from the treatment of waste that are not ruptured and that retain at least seventy-five (75) percent of their original volume. A mixture of debris that has not been treated to the standards provided by 401 KAR 47:040, Section 9, and other material is subject to regulation as debris if the mixture is comprised primarily of debris, by volume, based on a visual inspection].~~

(6) "Disposal" is defined by KRS 224.01-010(10).

(7)[~~(6)~~] "Environmental Protection Agency" or "EPA" means the Kentucky Department for Environmental Protection except if used in the phrases "EPA hazardous waste number", "EPA identification number", "EPA Region", "EPA Acknowledgment of Consent", "EPA Test Methods", and "EPA publications".

(8)[~~(7)~~] "EPA Region or Authorized State" means the Commonwealth of Kentucky in 401 KAR 37:010, Section 8, where 40 C.F.R. 268.9(d) is referenced.

(9)[~~(8)~~] "Federal Register" means the "Kentucky Administrative Register" as described in KRS 13A.050.

(10)[~~(9)~~] "Generator" is defined by KRS 224 01-010(13).

(11) "Halogenated organic compounds" means those compounds having a carbon-halogen bond which are listed under 401 KAR 37.060, Section 1.

(12)[~~(10)~~] "Hazardous constituent" is defined by KRS 224.01.010(42).

(13)[~~(11)~~] "Hazardous debris" means debris that contains a hazardous waste listed in a federal regulation cited in 401 KAR 31.040 or that exhibits a characteristic of hazardous waste identified in 401 KAR 31:030.

(14)[~~(12)~~] "Hazardous waste" is defined by KRS 224.01-010(31)(b).

(15) "Inorganic metal bearing waste" means one (1) for which EPA has established treatment standards for metal hazardous constituents, and which does not otherwise contain significant organic or cyanide content as described in 401 KAR 37:010, Section 3, and is specifically listed in 401 KAR 37:060, Section 7.

(16)[~~(13)~~] "Lab pack" means any large container equal to or smaller than fifty-five (55) gallons that holds many smaller containers of various content tightly secured with packing material.

(17)[~~(14)~~] "Land disposal" is defined by KRS 224.01-010(43)

(18) "LDR" means land disposal restrictions.

(19)[(15)] "Manifest" is defined by KRS 224.01-010(37).

(20) "Nonwastewaters" means waters that do not meet the criteria for wastewaters in subsection 1(33) of this section.

(21)[(16)] "Person" is defined by KRS 224.01-010(17).

(22) "Polychlorinated biphenyls" or "PCBs" means halogenated organic compounds defined in accordance with 40 C.F.R. 761.3.

(23)[(17)] "Publicly owned treatment works" or "POTW" is defined by KRS 224.01-010(19).

(24) "Soil" means unconsolidated earth material composing the superficial geologic strata (material overlying bedrock), consisting of clay, silt, sand, or gravel size particles as classified by the U.S. Natural Resources Conservation Service, or a mixture of such materials with [wit] liquids, sludges or solids which is inseparable by simple mechanical removal processes and is made up primarily of soil by volume based on visual inspection. Any deliberate mixing of prohibited hazardous waste with soil that changes its treatment classification (i.e., from waste to contaminated soil) is not allowed under the dilution prohibition in 401 KAR 37:010, Section 3.

(25)[(18)] "Solid waste" is defined in KRS 224.01-010(31)(a).

(26)[(19)] "Storage" is defined by KRS 224.01-010(28).

(27)[(20)] "Transfer facility" is defined by KRS 224.01-010(48).

(28)[(21)] "Transportation" is defined by KRS 224.01-010(29).

(29)[(22)] "Treatment" is defined by KRS 224.01-010(30).

(30) "Underlying hazardous constituents" means any constituents listed in 401 KAR 37:040, Section 9, Table UTS - Universal Treatment Standards, except fluoride, selenium, sulfides, vanadium, and zinc, which can reasonably be expected to be present at the point of generation of the hazardous waste at a concentration above the constituent-specific UTS treatment standards.

(31)[(23)] "United States" means the Commonwealth of Kentucky.

(32)[(24)] "Used oil" is defined by KRS 224.50-545(2)(a).

(33)[(25)] "Wastewaters" means wastes that contain less than one (1) percent by weight total organic carbon (TOC) and less than one (1) percent by weight total suspended solids (TSS), with the following exceptions:

(a) F001, F002, F003, F004, F005, wastewaters are solvent-water mixtures that contain less than one (1) percent by weight TOC or less than one (1) percent by weight total F001, F002, F003, F004, F005 solvent constituents listed in 401 KAR 37:040, Section 2 in Table Treatment Standards for Hazardous Waste;

(b) K011, K013, K014 wastewaters contain less than five (5) percent by weight TOC and less than one (1) percent by weight TSS, as generated; and

(c) K103 and K104 wastewaters contain less than four (4) percent by weight TOC and less than one (1) percent by weight TSS.

(34)[(26)] "Water " or "Waters of the Commonwealth" is defined by KRS 224.01-010(33).

Section 2. Substitution of Federal References. (1) The following federal parts and subparts, which are cited by federal regulations referenced in 401 KAR Chapter 37, shall be substituted with the state administrative regulations listed below.

Federal Regulation	State Regulation
40 C.F.R. Part 260	401 KAR Chapter 30
40 C.F.R. 260 Subpart A	401 KAR 30:020
40 C.F.R. 260 Subpart B	401 KAR 30.005, 401 KAR 30:020, 401 KAR 31.005, 401 KAR 32:005, 401 KAR 33.005, 401 KAR 34.005, 401 KAR 35:005, 401 KAR 36.005, 401 KAR 37:005, 401 KAR 38.005, 401 KAR 43:005, and 401 KAR 44.005
40 C.F.R. 260 Subpart C	401 KAR 30.035
40 C.F.R. Part 261	401 KAR Chapter 31
40 C.F.R. 261 Subpart A	401 KAR 31:010
40 C.F.R. 261 Subpart B	401 KAR 31.020
40 C.F.R. 261 Subpart C	401 KAR 31.030
40 C.F.R. 261 Subpart D	401 KAR 31:040
40 C.F.R. Part 262	401 KAR Chapter 32
40 C.F.R. 262 Subpart A	401 KAR 32.010
40 C.F.R. 262 Subpart B	401 KAR 32:020
40 C.F.R. 262 Subpart C	401 KAR 32.030
40 C.F.R. 262 Subpart D	401 KAR 32.040
40 C.F.R. 262 Subpart E	401 KAR 32:050, Sections 1-9
40 C.F.R. 262 Subpart F	401 KAR 32:050, Section 10
40 C.F.R. 262 Subpart G	401 KAR 32:060
40 C.F.R. 262 Subpart H	401 KAR 32:065
40 C.F.R. Part 263	401 KAR Chapter 33
40 C.F.R. 263 Subpart A	401 KAR 33:010
40 C.F.R. 263 Subpart B	401 KAR 33.020
40 C.F.R. 263 Subpart C	401 KAR 33.030
40 C.F.R. Part 264	401 KAR Chapter 34
40 C.F.R. 264 Subpart A	401 KAR 34.010
40 C.F.R. 264 Subpart B	401 KAR 34.020
40 C.F.R. 264 Subpart C	401 KAR 34:030
40 C.F.R. 264 Subpart D	401 KAR 34:040
40 C.F.R. 264 Subpart E	401 KAR 34:050
40 C.F.R. 264 Subpart F	401 KAR 34:060
40 C.F.R. 264 Subpart G	401 KAR 34.070
40 C.F.R. 264 Subpart H	401 KAR 34.080, 401 KAR 34:090, 401 KAR 34.100, 401 KAR 34:110, 401 KAR 34.120, 401 KAR 34:130
40 C.F.R. 264 Subpart I	401 KAR 34:180
40 C.F.R. 264 Subpart J	401 KAR 34:190
40 C.F.R. 264 Subpart K	401 KAR 34:200
40 C.F.R. 264 Subpart L	401 KAR 34:210
40 C.F.R. 264 Subpart M	401 KAR 34.220
40 C.F.R. 264 Subpart N	401 KAR 34:230
40 C.F.R. 264 Subpart O	401 KAR 34.240
40 C.F.R. 264 Subpart S	401 KAR 34.287
40 C.F.R. 264 Subpart W	401 KAR 34.285
40 C.F.R. 264 Subpart X	401 KAR 34.250
40 C.F.R. 264 Subpart AA	401 KAR 34.275
40 C.F.R. 264 Subpart BB	401 KAR 34:280
40 C.F.R. 264 Subpart CC	401 KAR 34.281
40 C.F.R. 264 Subpart DD	401 KAR 34.245
40 C.F.R. 264 Subpart EE	401 KAR 34.370
40 C.F.R. Part 265	401 KAR Chapter 35
40 C.F.R. 265 Subpart A	401 KAR 35:010
40 C.F.R. 265 Subpart B	401 KAR 35:020
40 C.F.R. 265 Subpart C	401 KAR 35:030
40 C.F.R. 265 Subpart D	401 KAR 35:040
40 C.F.R. 265 Subpart E	401 KAR 35:050
40 C.F.R. 265 Subpart F	401 KAR 35:060
40 C.F.R. 265 Subpart G	401 KAR 35.070
40 C.F.R. 265 Subpart H	401 KAR 35.080, 401 KAR 35:090, 401 KAR 35.100, 401 KAR 35:110, 401 KAR 35:120, 401 KAR 35:130
40 C.F.R. 265 Subpart I	401 KAR 35.180
40 C.F.R. 265 Subpart J	401 KAR 35:190
40 C.F.R. 265 Subpart K	401 KAR 35.200
40 C.F.R. 265 Subpart L	401 KAR 35:210
40 C.F.R. 265 Subpart M	401 KAR 35:220
40 C.F.R. 265 Subpart N	401 KAR 35:230
40 C.F.R. 265 Subpart O	401 KAR 35:240
40 C.F.R. 265 Subpart P	401 KAR 35:250
40 C.F.R. 265 Subpart Q	401 KAR 35:260
40 C.F.R. 265 Subpart R	401 KAR 35.270
40 C.F.R. 265 Subpart W	401 KAR 35:285
40 C.F.R. 265 Subpart AA	401 KAR 35.275
40 C.F.R. 265 Subpart BB	401 KAR 35:280
40 C.F.R. 265 Subpart CC	401 KAR 35.281
40 C.F.R. 265 Subpart DD	401 KAR 35.245

40 C.F.R 265 Subpart EE	401 KAR 35:350
40 C F R Part 266	401 KAR Chapter 36
40 C.F.R 266 Subpart C	401 KAR 36:030
40 C F R 266 Subpart F	401 KAR 36:060
40 C F R. 266 Subpart G	401 KAR 36:070
40 C F R 266 Subpart H	401 KAR 36:020
40 C.F.R. 266 Subpart M	401 KAR 36:080
40 C F.R. 266 Subpart N	401 KAR 36 090
40 C.F.R. Part 268	401 KAR Chapter 37
40 C F.R. 268 Subpart A	401 KAR 37.010
40 C F.R. 268 Subpart B	401 KAR 37:020
40 C.F.R. 268 Subpart C	401 KAR 37:030
40 C.F.R. 268 Subpart D	401 KAR 37·040
40 C.F.R. 268 Subpart E	401 KAR 37·050
40 C F.R. Part 270	401 KAR Chapter 38
40 C.F.R. 270 Subpart A	401 KAR 38 010
40 C.F.R. 270 Subpart B	401 KAR 38·070, 401 KAR 38:080, 401 KAR 38.090, 401 KAR 38:150 through 401 KAR 38:310
40 C F.R. 270 Subpart C	401 KAR 38:030
40 C.F.R. 270 Subpart D	401 KAR 38.040, Sections 1 through 4, 7
40 C F.R. 270 Subpart E	401 KAR 38·040, Sections 5 and 6
40 C F.R. 270 Subpart F	401 KAR 38 060
40 C F.R. 270 Subpart G	401 KAR 38 020
40 C.F.R. 270 Subpart H	401 KAR 38 320
40 C F.R. 270 Subpart I	401 KAR 38 330
40 C F.R. Part 124	401 KAR 38 050
40 C F.R. Part 273	401 KAR Chapter 43
40 C F.R. 273 Subpart A	401 KAR 43 010
40 C F.R. 273 Subpart B	401 KAR 43 020
40 C F.R. 273 Subpart C	401 KAR 43 030
40 C F.R. 273 Subpart D	401 KAR 43 040
40 C F.R. 273 Subpart E	401 KAR 43 050
40 C.F.R. 273 Subpart F	401 KAR 43:060
40 C.F.R. 273 Subpart G	401 KAR 43:070
40 C F.R. Part 279	401 KAR Chapter 44
40 C F.R. 279 Subpart A	401 KAR 44 005
40 C F.R. 279 Subpart B	401 KAR 44·010
40 C.F.R. 279 Subpart C	401 KAR 44:020
40 C F.R. 279 Subpart D	401 KAR 44 030
40 C F.R. 279 Subpart E	401 KAR 44·040
40 C.F.R. 279 Subpart F	401 KAR 44·050
40 C F.R. 279 Subpart G	401 KAR 44·060
40 C F.R. 279 Subpart H	401 KAR 44:070
40 C.F.R. 279 Subpart I	401 KAR 44:080

(2) The requirements of the following federal regulations, which are referenced in 401 KAR Chapter 37, shall include the modifications, exceptions, and additions that are specific to the Commonwealth of Kentucky set forth in the following state administrative regulations referenced in the table below.

Federal Regulation	State Regulation
40 C.F.R. 260.10	401 KAR 30:005, 401 KAR 30:020, 401 KAR 31:005, 401 KAR 32.005, 401 KAR 33:005, 401 KAR 34.005, 401 KAR 35.005, 401 KAR 36 005, 401 KAR 37.005, 401 KAR 38 005, 401 KAR 43:005, and 401 KAR 44·005
40 C F.R. 260.22	401 KAR 30 035, Section 3(2) and (3)
40 C F.R 261.4	401 KAR 31.010, Section 4
40 C F.R. 264 221	401 KAR 34 200, Section 2
40 C F.R. 264.1082	401 KAR 34.281, Section 2
40 C F.R. 266 205	401 KAR 36:080, Section 6
40 C F.R. 268 49	401 KAR 37:040, Section 10
40 C F.R. 270 61	401 KAR 38.060, Section 2

(3) The following federal regulations, which are cited by the federal regulations referenced in 401 KAR Chapter 37, shall be replaced with the state administrative regulations as identified in the table below

Federal Regulation	State Regulation
40 C.F.R. Part 60 Appendix A	401 KAR 59:020
40 C F.R. Part 257	401 KAR Chapter 47
40 C F.R. Part 258	401 KAR Chapter 48
40 C F.R. 264 140	401 KAR 34:080, Section 2
40 C.F.R. 264.141	401 KAR 34:080, Section 1
40 C.F.R. 264.142	401 KAR 34·090, Section 1
40 C.F.R. 264.143	401 KAR 34.090, Sections 2 through 12
40 C F.R. 264 144	401 KAR 34:100, Section 1
40 C.F.R. 264.145	401 KAR 34:100, Sections 2 through 12
40 C.F.R. 264.146	401 KAR 34:110
40 C F.R. 264 147	401 KAR 34:120
40 C.F.R. 264.148	401 KAR 34:130
40 C F.R. 265 140	401 KAR 35:080, Section 2
40 C F.R. 265 141	401 KAR 35:080, Section 1
40 C.F.R. 265 142	401 KAR 35:090, Section 1
40 C.F.R. 265.143	401 KAR 35:090, Sections 2 through 11
40 C.F.R. 265 144	401 KAR 35:100, Section 1
40 C.F.R. 265.145	401 KAR 35:100, Sections 2 through 11
40 C F.R. 265 146	401 KAR 35:110
40 C.F.R. 265.147	401 KAR 35:120
40 C F.R. 265 148	401 KAR 35:130
40 C.F.R. 266 Appendix I, Table I-D	401 KAR 36:025, Section 1(2)(a)
40 C.F.R. 266 Appendix I, Table I-E	401 KAR 36:025, Section 1(2)(b)

HANK LIST, Deputy Secretary
For ROBERT D. VANCE, Secretary
APPROVED BY AGENCY: June 12, 2008
FILED WITH LRC: June 13, 2008 at 10 a m.
CONTACT PERSON Anthony R Hatton, Assistant Director, Division of Waste Management, 14 Reilly Road, Frankfort, Kentucky 40601, phone (502) 564-6716, fax (502) 564-4049, email Tony Hatton@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Anthony R. Hatton, Assistant Director
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation defines terms used in 401 KAR Chapter 37.
(b) The necessity of this administrative regulation: This administrative regulation is necessary to define terms that are used in 401 KAR Chapter 37.
(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the authorizing statutes by defining terms to aid the reader in clearly understanding the material within 401 KAR Chapter 37.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will allow accurate interpretation of 401 KAR Chapter 36 by defining terms that have meanings unique to the chapter.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of.
(a) How the amendment will change this existing administrative regulation: This amendment will reference 40 C.F.R. 260.10 for the definition of "debris".
(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to keep the definition consistent with the federal definition.
(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the authorizing statutes by defining the term consistent with federal regulations and to aid the reader in clearly understanding the material within 401 KAR

Chapter 37.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will allow accurate interpretation of 401 KAR Chapter 37 by updating the term that has a meaning unique to the chapter.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect generators of hazardous waste and solid waste facilities.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including: There are no substantive changes to regulatory requirements associated with this administrative regulation.

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: There are no substantive changes to regulatory requirements associated with this administrative regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3). It will not cost anything to comply with this regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): There will not be benefits from compliance as there are no requirements in the regulation.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation: There will be no costs associated with the implementation of this administrative regulation.

(a) Initially: N/A

(b) On a continuing basis: N/A

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Implementation and enforcement of this administrative regulation would be achieved by a combination of general funds and grants from the federal Environmental Protection Agency.

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

(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 fees.

(9) TIERING: Is tiering applied? No tiering is applied. This administrative regulation applies to all entities who generate, transport, store, or dispose of hazardous waste. To apply tiering to the regulation would unduly regulate some entities while not regulating others.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will impact any units of state or local government that generate transport, store, or dispose of hazardous wastes.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. This chapter implements provisions of KRS 224.46-505 and 224 46-520 relative to land disposal restrictions.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. This regulation will not affect expenditures or revenues.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This regulation will not generate any revenue.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This regulation will not generate any revenue.

(c) How much will it cost to administer this program for the first year? No costs are associated with this regulation.

(d) How much will it cost to administer this program for subsequent years? No costs are associated with this regulation.

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

Revenues (+/-): N/A

Expenditures (+/-): N/A

Other Explanation: N/A

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 40 C.F.R. 260.10

2. State Compliance Standards. KRS 224.10-100, 224.46-505, 224.46-520, and 224.46-530.

3. Minimum or uniform standards contained in the federal mandate. 40 C.F.R. 260.10

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate. Yes. Certain definitions in this administrative regulation are different than the corresponding federal definitions.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. There are definitions in 40 C.F.R. 260.10 that are also defined in Kentucky statutes. KRS 13A.222(4)(d) requires an administrative body to refer to statutory definitions when one exists. Therefore, there are statutory terms defined in this administrative regulation that differ from some of the terms used in 40 C.F.R. 260.10. Also there are defined terms used in this chapter that are not defined in 40 C.F.R. 260.10.

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department for Environmental Protection
Division of Waste Management
(Amended After Comments)

401 KAR 38:005. Definitions for 401 KAR Chapter 38.

RELATES TO: KRS Subchapters 224 01, 224.10, 224 40, 224.43, 224.46, 40 C.F.R. 260.10, 270.2

STATUTORY AUTHORITY: KRS 224.10-100, 224.46-505, 224.46-520

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100(30) authorizes the Environmental and Public Protection Cabinet to promulgate administrative regulations. This administrative regulation defines essential terms that are used in 401 KAR Chapter 38. Some federal terms have been modified to conform to Kentucky statutory mandates. Definitions contained in KRS Chapter 224 have been referenced to the appropriate statutory citation. Some terms do not have a federal counterpart and have been added to clarify requirements and provisions of KRS Chapter 224 and 401 KAR Chapter 38.

Section 1. Definitions. Except as provided in this section, the definitions established in 40 C.F.R. 260.10, effective September 9, 2005, shall apply.

(1) "100-year flood" means a flood that has a one (1) percent chance of being equaled or exceeded in any given year.

(2) "100-year floodplain" means any land area which is subject to a one (1) percent or greater chance of flooding in any given year from any source.

(3) "Administrator", "agency", "regional administrator", "assistant administrator", "assistant administrator for solid waste and emergency response", "director", "regional director", or "state director" means cabinet as defined in KRS 224.01-010(9).

(4) "Burn" means burning for energy recovery or destruction, or processing for materials recovery or as an ingredient.

(5) "Cabinet" is defined by KRS 224 01-010(9).

(6) "Closure" is defined by KRS 224.01-010(4).

(7) "Corrective Action Management Unit" or "CAMU" means an area within a facility that:

(a) Is designated by the cabinet under 401 KAR 34:287, for the purpose of implementing corrective action requirements under 401 KAR 34.060, Section 12 and KRS 224.46-520; and

(b) Shall only be used for the management of remediation wastes pursuant to implementing the corrective action requirements at the facility.

(8) "CWA" means the Clean Water Act (formerly referred to as the Federal Water Pollution Control Act or Federal Water Pollution Control Act Amendments of 1972) Pub. L. 92-500, as amended by Pub. L. 92-217 and Pub. L. 95-576; 33 U.S.C. 1251 et seq.

(9) "Disposal" is defined by KRS 224.01-010(10).

(10) "Draft permit" means a document prepared under 401 KAR 38:050, Section 3, indicating the[a] cabinet's tentative decision to issue or deny, modify, revoke and reissue, terminate, or reissue a permit. A notice of intent to terminate a permit, and a notice of intent to deny a permit, as discussed in 401 KAR 38:050, Section 2 is [not] a "draft permit". A proposed permit is not a draft permit. **A denial of a request for modification, revocation and reissuance, or termination, as discussed in 401 KAR 38:050, is not a "draft permit".**

(11) "Emergency permit" means a hazardous waste management permit issued in accordance with 401 KAR 38:060 Section 2.

(12)[(9)] "Environmental Protection Agency" or "EPA" means the Kentucky Department for Environmental Protection except if used in the phrases "EPA hazardous waste number", "EPA identification number", "EPA Region", "EPA Acknowledgment of Consent", "EPA Test Methods", and "EPA publications".

(13) "Facility or activity" means any HWM facility or any other facility or activity (including land or appurtenances thereto) that is subject to regulation under 401 KAR Chapters 34, 35, or 38.

(14) "Facility mailing list" means the mailing list for a facility maintained by the cabinet in accordance with 401 KAR 38:050 Section 7(3)(a).

(15)[(10)] "Federal Register" means the "Kentucky Administrative Register" as described in KRS 13A 050.

(16) "Functionally equivalent component" means a component which performs the same function or measurement and which meets or exceeds the performance specifications of another component.

(17)[(11)] "Generator" is defined by KRS 224.01-010(13).

(18)[(12)] "Hazardous waste" is defined by KRS 224.01-010(31)(b).

(19) "Hazardous Waste Management Facility" or "HWM Facility" means all contiguous land, and structures, other appurtenances, and improvements on the land, used for treating, storing, or disposing of hazardous waste. A facility may consist of several treatment, storage, or disposal operational units.

(20)[(13)] "Hazardous waste site or facility" means any place at which hazardous waste is treated, stored, or disposed of by landfilling, incineration, or any other method and includes boiler, disposal facility, elementary neutralization unit, incinerator, industrial furnace, hazardous waste transfer facility, injection well, landfill, land treatment facility, miscellaneous unit, pile or waste pile, replacement unit, storage facility, sludge dryer, surface impoundment, tank, thermal treatment facility, totally enclosed treatment facility, treatment facility, or wastewater treatment unit.

(21)[(14)] "Interim status" means the designation of a hazardous waste site or facility which was in existence on November 19, 1980, and has submitted a Part A application under 401 KAR Chapter 38 or under 40 C.F.R. Part 270 and is treated as having a permit until final administrative disposition of the application is made.

(22)[(15)] "KPDES" means the Kentucky Pollution Discharge Elimination System.

(23) "Major facility" means any facility or activity classified as such by the regional administrator in conjunction with the cabinet.

(24)[(16)] "Manifest" is defined by KRS 224.01-010(37).

(25)[(17)] "Monitoring" means the act of systematically inspecting and collecting data on operational parameters or on the quality of the air, soil, groundwater, or surface water.

(26) "Off-site" means any site which is not on-site.

(27)[(18)] "Part A of the application" or "Part A" means the standard forms or format for applying for a hazardous waste site or facility permit as required in 401 KAR 38 080.

(28)[(19)] "Part B of the application" or "Part B" means the standard format for applying for a hazardous waste site or facility permit as required in 401 KAR 38:090 to 38:300.

(29) "Permit" means an authorization, license, or equivalent control document issued by the cabinet to implement the requirements of 401 KAR Chapter 38. Permit includes permit by rule, emergency permit and standardized permit. Permit does not include interim status (401 KAR 38 020), or any permit which has not been subject to final agency action, such as a draft permit or a proposed permit.

(30)[(20)] "Permit by rule" means authorization allowing certain classes of sites or facilities to manage waste consistent with 401 KAR Chapters 30 to 49, without submission of a registration or permit application to the cabinet, including facilities operating under an interim status permit and facilities identified in 401 KAR 38:060, Section 1.

(31)[(21)] "Permittee" means any person holding a valid permit issued by the cabinet to manage, treat, store, or dispose of waste.

(32)[(22)] "Person" is defined by KRS 224.01-010(17).

(33) "Physical construction" means excavation, movement of earth, erection of forms or structures, or similar activity to prepare an HWM facility to accept hazardous waste.

(34)[(23)] "Publicly owned treatment works" or "POTW" is defined by KRS 224.01-010(19).

(35) "Remedial action plan" means a special form of hazardous waste management permit that a facility owner or operator may obtain instead of a permit issued under 401 KAR 38:010 through 38:310, to authorize the treatment, storage or disposal of hazardous remediation waste, as defined in 401 KAR 38 005, at a remediation waste management site.

(36)[(24)] "Research, development, and demonstration permit" means a permit issued by the cabinet for a hazardous waste treatment facility that utilizes an innovative and experimental hazardous waste treatment technology or process for which permit standards for the experimental activity have not been promulgated under 401 KAR Chapters 34, 35, or 36.

(37) "Schedule of compliance" means a schedule of remedial measures included in a permit, including an enforceable sequence of interim requirements (for example, actions, operations, or milestones events) leading to compliance with the Act and regulations.

(38) "SDWA" means the Safe Drinking Water Act (Pub. L. 95-523, as amended by Pub. L. 95-1900; 42 U.S.C. 3001 et seq).

(39) "Site" means the land or water area where any facility or activity is physically located or conducted, including adjacent land used in connection with the facility or activity.

(40)[(25)] "Solid waste" is defined in KRS 224.01-010(31)(a).

(41)[(26)] "State" means cabinet as defined in KRS 224.01-010(9).

(42) "State/EPA agreement" means an agreement between the regional administrator and the cabinet which coordinates EPA and Cabinet activities, responsibilities and programs.

(43)[(27)] "Storage" is defined by KRS 224.01-010(28).

(44)[(28)] "Transfer facility" is defined by KRS 224.01-010(48).

(45)[(29)] "Transportation" is defined by KRS 224.01-010(29).

(46)[(30)] "Treatment" is defined by KRS 224.01-010(30).

(47)[(31)] "UIC well" means an underground injection control well as provided in 40 C.F.R. Part 144.

(48)[(32)] "United States" means the Commonwealth of Kentucky.

(49)[(33)] "Used oil" is defined by KRS 224.50-545(2)(a).

(50)[(34)] "Water" or "Waters of the Commonwealth" is defined by KRS 224.01-010(33).

Section 2. Substitution of Federal References. (1) The following federal parts and subparts, which are cited by federal regulations referenced in 401 KAR Chapter 38, shall be substituted with the state administrative regulations listed below.

Federal Regulation	State Regulation
40 C.F.R. Part 260	401 KAR Chapter 30
40 C.F.R. 260 Subpart A	401 KAR 30 020

40 C.F.R. 260 Subpart B	401 KAR 30.005, 401 KAR 31 005, 401 KAR 32:005, 401 KAR 33.005, 401 KAR 34:005, 401 KAR 35:005, 401 KAR 36:005, 401 KAR 37:005, 401 KAR 38:005, 401 KAR 43:005, 401 KAR 44:005, and 401 KAR 30.020
40 C F.R. 260 Subpart C	401 KAR 30.035
40 C F.R. Part 261	401 KAR Chapter 31
40 C.F.R. 261 Subpart A	401 KAR 31 010
40 C.F.R. 261 Subpart B	401 KAR 31 020
40 C.F.R. 261 Subpart C	401 KAR 31:030
40 C.F.R. 261 Subpart D	401 KAR 31:040
40 C.F.R. Part 262	401 KAR Chapter 32
40 C.F.R. 262 Subpart A	401 KAR 32:010
40 C F R. 262 Subpart B	401 KAR 32:020
40 C.F.R. 262 Subpart C	401 KAR 32:030
40 C F.R. 262 Subpart D	401 KAR 32:040
40 C F.R. 262 Subpart E	401 KAR 32 050, Sections 1-9
40 C F.R. 262 Subpart F	401 KAR 32:050, Section 10
40 C F R. 262 Subpart G	401 KAR 32:060
40 C F R. 262 Subpart H	401 KAR 32 065
40 C F.R. Part 263	401 KAR Chapter 33
40 C F R 263 Subpart A	401 KAR 33:010
40 C F.R. 263 Subpart B	401 KAR 33 020
40 C F.R. 263 Subpart C	401 KAR 33 030
40 C F.R Part 264	401 KAR Chapter 34
40 C F.R 264 Subpart A	401 KAR 34 010
40 C.F.R. 264 Subpart B	401 KAR 34 020
40 C F.R 264 Subpart C	401 KAR 34 030
40 C F.R 264 Subpart D	401 KAR 34.040
40 C.F.R. 264 Subpart E	401 KAR 34:050
40 C.F.R. 264 Subpart F	401 KAR 34 060
40 C.F.R. 264 Subpart G	401 KAR 34.070
40 C.F.R. 264 Subpart H	401 KAR 34.080, 401 KAR 34:090, 401 KAR 34:100, 401 KAR 34:110, 401 KAR 34:120, 401 KAR 34:130
40 C F.R. 264 Subpart I	401 KAR 34:180
40 C.F.R. 264 Subpart J	401 KAR 34:190
40 C F.R. 264 Subpart K	401 KAR 34:200
40 C.F.R. 264 Subpart L	401 KAR 34:210
40 C F R. 264 Subpart M	401 KAR 34:220
40 C F R 264 Subpart N	401 KAR 34:230
40 C F.R. 264 Subpart O	401 KAR 34 240
40 C.F.R 264 Subpart S	401 KAR 34:287
40 C F R 264 Subpart W	401 KAR 34 285
40 C F.R. 264 Subpart X	401 KAR 34 250
40 C.F.R. 264 Subpart AA	401 KAR 34 275
40 C.F.R. 264 Subpart BB	401 KAR 34 280
40 C.F.R. 264 Subpart CC	401 KAR 34 281
40 C.F.R. 264 Subpart DD	401 KAR 34 245
40 C.F.R. 264 Subpart EE	401 KAR 34.370
40 C.F.R. Part 265	401 KAR Chapter 35
40 C.F.R. 265 Subpart A	401 KAR 35.010
40 C.F.R. 265 Subpart B	401 KAR 35:020
40 C.F.R. 265 Subpart C	401 KAR 35 030
40 C.F.R. 265 Subpart D	401 KAR 35:040
40 C.F.R. 265 Subpart E	401 KAR 35:050
40 C.F.R. 265 Subpart F	401 KAR 35 060
40 C.F.R. 265 Subpart G	401 KAR 35:070
40 C.F.R. 265 Subpart H	401 KAR 35 080, 401 KAR 35.090, 401 KAR 35:100, 401 KAR 35:110, 401 KAR 35:120, 401 KAR 35:130
40 C F.R. 265 Subpart I	401 KAR 35:180
40 C F.R. 265 Subpart J	401 KAR 35:190
40 C F.R. 265 Subpart K	401 KAR 35:200
40 C.F.R. 265 Subpart L	401 KAR 35:210
40 C.F.R. 265 Subpart M	401 KAR 35:220
40 C.F.R 265 Subpart N	401 KAR 35 230
40 C F.R. 265 Subpart O	401 KAR 35:240
40 C F.R 265 Subpart P	401 KAR 35:250
40 C.F.R 265 Subpart Q	401 KAR 35:260
40 C.F.R 265 Subpart R	401 KAR 35:270
40 C.F.R 265 Subpart W	401 KAR 35:285
40 C.F.R. 265 Subpart AA	401 KAR 35:275
40 C.F.R. 265 Subpart BB	401 KAR 35:280
40 C.F.R. 265 Subpart CC	401 KAR 35.281
40 C.F.R. 265 Subpart DD	401 KAR 35:245
40 C.F.R. 265 Subpart EE	401 KAR 35.350
40 C.F.R. Part 266	401 KAR Chapter 36
40 C F R 266 Subpart C	401 KAR 36.030
40 C F.R 266 Subpart F	401 KAR 36:060
40 C F.R 266 Subpart G	401 KAR 36:070
40 C.F.R 266 Subpart H	401 KAR 36:020
40 C.F.R. 266 Subpart M	401 KAR 36:080
40 C.F.R. 266 Subpart N	401 KAR 36:090
40 C.F.R. Part 268	401 KAR Chapter 37
40 C.F.R. 268 Subpart A	401 KAR 37 010
40 C.F.R. 268 Subpart B	401 KAR 37:020
40 C.F.R. 268 Subpart C	401 KAR 37.030
40 C.F.R. 268 Subpart D	401 KAR 37:040
40 C F.R. 268 Subpart E	401 KAR 37 050
40 C F.R. Part 270	401 KAR Chapter 38
40 C F R. 270 Subpart A	401 KAR 38 010
40 C.F.R. 270 Subpart B	401 KAR 38:070, 401 KAR 38.080, 401 KAR 38:090, 401 KAR 38:150 through 401 KAR 38:310
40 C F.R. 270 Subpart C	401 KAR 38 030
40 C.F.R. 270 Subpart D	401 KAR 38 040, Sections 1 through 4, 7
40 C F.R 270 Subpart E	401 KAR 38.040, Sections 5 and 6
40 C F.R 270 Subpart F	401 KAR 38:060
40 C.F.R. 270 Subpart G	401 KAR 38:020
40 C.F.R. 270 Subpart H	401 KAR 38:320
40 C.F.R 270 Subpart I	401 KAR 38:330
40 C.F.R. Part 124	401 KAR 38:050
40 C.F.R. Part 273	401 KAR Chapter 43
40 C.F.R. 273 Subpart A	401 KAR 43 010
40 C.F.R. 273 Subpart B	401 KAR 43 020
40 C F.R. 273 Subpart C	401 KAR 43 030
40 C.F.R. 273 Subpart D	401 KAR 43 040
40 C.F.R. 273 Subpart E	401 KAR 43 050
40 C.F.R. 273 Subpart F	401 KAR 43:060
40 C.F.R. 273 Subpart G	401 KAR 43 070
40 C.F.R. Part 279	401 KAR Chapter 44
40 C.F.R. 279 Subpart A	401 KAR 44:005
40 C.F.R. 279 Subpart B	401 KAR 44 010
40 C F R. 279 Subpart C	401 KAR 44:020
40 C.F.R. 279 Subpart D	401 KAR 44 030
40 C.F.R. 279 Subpart E	401 KAR 44 040
40 C F R. 279 Subpart F	401 KAR 44 050
40 C F R. 279 Subpart G	401 KAR 44 060
40 C F R. 279 Subpart H	401 KAR 44 070
40 C F R. 279 Subpart I	401 KAR 44 080

(2) The requirements of the following federal regulations, which are referenced in 401 KAR Chapter 38, shall include the modifications, exceptions, and additions that are specific to the Commonwealth of Kentucky set forth in the following state administrative regulations referenced in the table below.

Federal Regulation	State Regulation
40 C.F.R. 260.10	401 KAR 30.005, 401 KAR 31:005,

	401 KAR 32:005, 401 KAR 33.005, 401 KAR 34:005, 401 KAR 35:005, 401 KAR 36:005, 401 KAR 37:005, 401 KAR 38:005, 401 KAR 43.005, 401 KAR 44:005, and 401 KAR 30:020
40 C.F.R 261.4	401 KAR 31:010, Section 4
40 C F R 264.97	401 KAR 34:060, Section 8
40 C.F.R. 264 221	401 KAR 34:200, Section 2
40 C.F.R. 264.301	401 KAR 34 230, Section 2
40 C.F.R. 264 251	401 KAR 34 210, Section 2
40 C.F.R. 265 94	401 KAR 35 060, Section 5
40 C.F.R. 264.1082	401 KAR 34 281, Section 2
40 C F.R. 266 205	401 KAR 36 080, Section 6
40 C.F.R. 270 2	401 KAR 38 005
40 C.F.R. 270 3	401 KAR 38 010, Section 2
40 C F.R. 270.10	401 KAR 38:070, Section 1
40 C F.R. 270.14	401 KAR 38 090
40 C F.R. 270.17	401 KAR 38:170
40 C.F.R. 270.50	401 KAR 38 040, Section 5
40 C.F.R. 270.60	401 KAR 38 060
40 C.F.R 270.61	401 KAR 38 060, Section 2
40 C F R 270.62	401 38:060, Section 3
40 C F.R. 270.63	401 38:060, Section 4

(3) The following federal regulations, which are cited by the federal regulations referenced in 401 KAR Chapter 38 shall be replaced with the state administrative regulations as identified in the table below.

Federal Regulation	State Regulation
40 C.F.R. Part 60 Appendix A	401 KAR 59.020
40 C.F.R. Part 257	401 KAR Chapter 47
40 C.F R Part 258	401 KAR Chapter 48
40 C.F R 264.18	401 KAR 34 020, Section 9
40 C F R 264 94	401 KAR 34 060, Section 5
40 C.F.R 264 101	401 KAR 34:060, Section 12
40 C.F.R. 264.140	401 KAR 34:080, Section 2
40 C.F.R. 264.141	401 KAR 34 080, Section 1
40 C.F.R. 264.142	401 KAR 34:090, Section 1
40 C.F.R. 264.143	401 KAR 34:090, Sections 2 through 12
40 C.F.R. 264.144	401 KAR 34:100, Section 1
40 C.F.R. 264.145	401 KAR 34:100, Sections 2 through 12
40 C.F.R 264.146	401 KAR 34:110
40 C.F.R. 264.147	401 KAR 34:120
40 C.F.R 264.148	401 KAR 34:130
40 C.F R 265 140	401 KAR 35:080, Section 2
40 C.F.R. 265.141	401 KAR 35:080, Section 1
40 C.F.R. 265.142	401 KAR 35:090, Section 1
40 C.F.R. 265.143	401 KAR 35:090, Sections 2 through 11
40 C.F.R. 265.144	401 KAR 35:100, Section 1
40 C.F.R 265.145	401 KAR 35:100, Sections 2 through 11
40 C.F.R. 265.146	401 KAR 35:110
40 C F R. 265.147	401 KAR 35 120
40 C.F.R 265.148	401 KAR 35:130
40 C F.R 266.106	401 KAR 36.020, Section 8
40 C.F.R. 266 Appendix I, Table I-D	401 KAR 36 025, Section 1(2)(a)
40 C.F.R. 266 Appendix I, Table I-E	401 KAR 36:025, Section 1(2)(b)
40 C.F.R. 266 Appendix V	401 KAR 36.025, Section 5
40 C F.R. 270 13	401 KAR 38 080
40 C F.R. 270 30	401 KAR 38.030, Section 1
40 C.F.R. 270.51	401 KAR 38 040, Section 6
40 C.F R. Part 280	401 KAR Chapter 42

HANK LIST, Deputy Secretary
For ROBERT D. VANCE, Secretary
APPROVED BY AGENCY: June 12, 2008
FILED WITH LRC: June 13, 2008 at 10 a.m.
CONTACT PERSON: Anthony R. Hatton, Assistant Director, Division of Waste Management, 14 Reilly Road, Frankfort, Kentucky 40601, phone (502) 564-6716, fax (502) 564-4049, email Tony.Hatton@ky gov

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Anthony R. Hatton, Assistant Director

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation defines terms used in 401 KAR Chapter 38.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to define terms that are used in 401 KAR Chapter 38.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the authorizing statutes by defining terms to aid the reader in clearly understanding the material within 401 KAR Chapter 38.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will allow accurate interpretation of 401 KAR Chapter 38 by defining terms that have meanings unique to the chapter.

(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 "draft permit" to be consistent with 40 C.F.R. 270.2.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to update the definition of "draft permit".

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the authorizing statutes by defining terms to aid the reader in clearly understanding the material within 401 KAR Chapter 38.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will allow accurate interpretation of 401 KAR Chapter 38 by updating terms that have meanings unique to the chapter.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect owners and operators of facilities that treat, store and dispose of hazardous waste (TSD). There are approximately 16 TSD facilities in the Commonwealth of Kentucky.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including: There are no substantive changes to regulatory requirements associated with this administrative regulation.

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: This amendment add no additional requirements for TSD facilities.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): It will not cost anything to comply with this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): There are not benefits that accrue from compliance with this regulation.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation: There will be no costs associated with the implementation of this administrative regulation.

(a) Initially: N/A

(b) On a continuing basis: N/A

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Implementation and enforcement of this administrative regulation would be achieved by a combination of general funds and grants

from the federal Environmental Protection Agency.

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

(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 fees.

(9) TIERING: Is tiering applied? No tiering is applied. This administrative regulation applies to all entities who generate, transport, store, or dispose of hazardous waste. To apply tiering to the regulation would unduly regulate some entities while not regulating others.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will impact any units of state or local government that generate transport, store, or dispose of hazardous wastes.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. This administrative regulation implements provisions of KRS 224.46-520 and 224.46-530 by establishing the general provisions applicable to TSD facilities.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. This regulation will not affect expenditures or revenues.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This regulation will not generate any revenue.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This regulation will not generate any revenue.

(c) How much will it cost to administer this program for the first year? No costs are associated with this regulation.

(d) How much will it cost to administer this program for subsequent years? No costs are associated with this regulation.

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

Revenues (+/-): N/A
Expenditures (+/-): N/A
Other Explanation: N/A

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 40 C.F.R. 260.10.

2. State Compliance Standards. KRS 224.10-100, 224.46-505, 224.46-520, and 224 46-530.

3. Minimum or uniform standards contained in the federal mandate. 40 C.F.R. 260.10.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate. Yes. Certain definitions in this administrative regulation are different than the corresponding federal definitions.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements There are definitions in 40 C.F.R. 260.10 that are also defined in Kentucky statutes. KRS 13A.222(4)(d) requires an administrative body to refer to statutory definitions when one exists. Therefore, there are statutory terms defined in this administrative regulation that differ from some of the terms used in 40 C.F.R. 260.10. Also there are defined terms used in this chapter that are not defined in 40 C.F.R. 260.10.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Community Based Services
Division of Protection and Permanency
(Amended After Comments)

922 KAR 1:310. Standards for child-placing agencies.

RELATES TO: KRS 2 015, 17.165, 17.500(8), 158 135(1)(c), 194A.060, 199.011, 199.430(3), 199.470, 199.492, 199 493, 199.510, 199.520, 199.570, 199 572, 199.590, 199.640, 199.645, 199.650-199.670, 202A.011(12), 202B.010(12), 216.300, 273.161(7), 311.720(9), 311.840(3), 314.011(5), (7), (9), 503.110(1), 527.100, 527.110, 600.020, 605.090(1), 610.110(6), 615 010-615 990, 620.020, 620.030, 620.090(2), 620.140(1)(d), 620.230(3), 625.040, 625.043, 16 C.F.R. 1508 and 1509, 45 C F.R. Parts 160, 164, 1355.34, 8 U.S.C. 1151, 42 U.S.C. 671(a)(23), 42 U.S.C. 677(a)(1)-(6), 14901-14954

STATUTORY AUTHORITY: KRS 194A.050(1), 199.640(5)(a), 605 150, 615.050

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the Secretary of the Cabinet for Health and Family Services to promulgate, administer, and enforce those 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. KRS 199.640(5)(a) requires the Secretary of the Cabinet for Health and Family Services to promulgate administrative regulations establishing basic standards of care and service for child-caring facilities and child-placing agencies. KRS 605.150 permits the cabinet to promulgate administrative regulations to implement the provisions of KRS Chapter 605. This administrative regulation establishes basic standards for child-placing agencies

Section 1. Definitions. (1) "Adequate supervision" means adult oversight of a child's activities with consideration of the child's past and current:

(a) Incidents;

(b) High risk behaviors; and

(c) Needs.

(2) "Adoption" means the legal process by which a child becomes the child of a person or persons other than biological parents.

(3) "Aftercare" means services provided to the child after discharge from a child-placing agency.

(4) "Applicant" means an individual or a family subject to approval by the child-placing agency as a:

(a) Foster home; or

(b) Adoptive home.

(5) "Board of directors" is defined by KRS 273.161(7)

(6) "Case management" means a process whereby a state agency or child-placing agency assesses the individualized needs of a child or family, arranges for the provision of services, and maintains documentation of actions and outcomes.

(7) "Child" is defined by KRS 199.011(4) and 600.020(8) and may include:

(a) A person age eighteen (18) or older whose commitment to the cabinet has been extended or reinstated by a court in accordance with KRS 610.110(6) or 620.140(1)(d); or

(b) A child who meets the exceptions to the age of majority in accordance with KRS 2.015.

(8) "Child-placing agency" is defined by KRS 199.011(7).

(9) **"College or university" means:**

(a) An institution accredited by one (1) of the eleven (11) regional accrediting organizations recognized by the U.S. Department of Education, Office of Postsecondary Education;

(b) For a Kentucky institution, one that is licensed by the Kentucky Council on Postsecondary Education or the Kentucky Board for Proprietary Education; and

(c) For an out-of-state institution, one that is licensed in its

home state if licensure is required in that state.

(10) "Community resource" means a service or activity available in the community that shall supplement those provided by the child-placing agency in the care and treatment of a child.

(11)[(10)] "Executive director" means the person employed by the board of directors to be responsible for the overall administration and management of a child-placing agency.

(12)[(11)] "Home study" means an assessment done on a prospective foster or adoptive home by a social services worker.

(13)[(12)] "Independent living program" means a planned program that:

(a) Is licensed by the cabinet and designed to teach a child age sixteen (16) or older life skills that enable a child to become self-sufficient; and

(b) Meets requirements specified in Section 17(1) of this administrative regulation.

(14)[(13)] "Independent living services" means services provided to an eligible child, as described in Section 16 of this administrative regulation, to assist the child in the transition from dependency of childhood to living independently.

(15)[(14)] "Individual treatment plan" or "ITP" means a plan of action developed and implemented to address the needs of a child.

(16)[(15)] "Licensed health care professional" is defined by KRS 216.300(1).

(17)[(16)] "Medically-fragile child" means a child who is determined to have a medical condition as specified in 922 KAR 1:350.

(18)[(17)] "Mental health treatment" means services provided to an individual determined to have emotional, mental, or behavioral problems.

(19)[(18)] "Placement" means a foster or adoptive home that has been approved by completing an application process, home study and required preparation.

(20)[(19)] "Program director" means the person responsible for supervising the day-to-day operation of the program.

(21)[(20)] "Respite care" means temporary care provided by another individual or family to:

(a) Provide relief to a foster care parent, therapeutic foster care parent, or medically-fragile foster parent; or

(b) Allow an adjustment period for the child placed in out-of-home care.

(22)[(21)] Sex crime is defined by KRS 17.500(8).

(23)[(22)] "Social services" means a planned program of assistance to help an individual move toward a mutual adjustment of the individual and the individual's environment.

(24)[(23)] "Social services worker" means a person who meets the qualifications as specified in Section 2(4)(c) of this administrative regulation.

(25)[(24)] "Supervision Plan" means a written supplement to a child's ITP, developed pursuant to Section 6(7)(b)2 of this administrative regulation, that details a child-placing agency's roles and responsibilities to assure adequate supervision of a child in the agency's care, including those roles and responsibilities delegated to a foster home parent.

(26)[(25)] "Therapeutic foster care" is defined by KRS 158.135(1)(c).

(27)[(26)] "Therapeutic services" means clinical or supportive services provided to a child with severe emotional or behavioral needs.

(28)[(27)] "Treatment director" means an individual who meets the qualifications as specified in Section 2(4)(d) of this administrative regulation.

Section 2. Administration and Operation. (1) Licensing procedures.

(a) Licensing procedures for a child-placing agency shall be administered pursuant to 922 KAR 1:305.

(b) An independent living program is an optional component of the child-placing agency's license.

(c) A child-placing agency shall obtain accreditation within two (2) years of initial licensure or within two (2) years of acquiring an agreement with the cabinet to provide private child care services, whichever is later. Accreditation shall be from a nationally-recognized accreditation organization, such as:

1. The Council on Accreditation; or

2. The Joint Commission on Accreditation for Healthcare Organizations.

(2) Board of directors. The child-placing agency shall have a board of directors, or an advisory board if the child-placing agency is a privately-held for-profit organization, that shall:

(a) Consist of a minimum of seven (7) members;

(b) Meet at least quarterly;

(c) Cause minutes of the meeting to be taken and kept in written form;

(d) Be responsible for and have the authority to ensure the continuing compliance with the requirements established by this administrative regulation;

(e) Approve a mission statement delineating the:

1. Purpose;

2. Objective,

3. Scope of services to be provided; and

4. Intake policy specifying the type of child to be accepted for care;

(f) Hire, supervise, and annually evaluate the executive director of the child-placing agency; and

(g) Delineate in writing the duties of the executive director.

(3) Executive director.

(a) The executive director shall:

1. Be responsible for the child-placing agency and its affiliates, pursuant to the child-placing agency's written policies and procedures;

2. Oversee all aspects of the child-placing agency; and

3. Report to the board, on a quarterly basis, the following:

a. Evaluation of program services;

b. Measure attainment of the goals and objectives established pursuant to subsection (2)(e)2 of this section;

c. Staff training; and

d. Incident reports.

(b) The criteria and process of this evaluation shall be approved by the board annually.

(c) If the executive director is not available, a designated staff person shall be responsible for the day-to-day operation of the child-placing agency.

(4) Staff qualifications.

(a) An executive director shall possess the following qualifications.

1.a. A master's degree from a college and university in any of the following human services fields:

(i) Social work;

(ii) Sociology;

(iii) Psychology;

(iv) Guidance and counseling;

(v) Education;

(vi) Religious education;

(vii) Business administration;

(viii) Criminal justice;

(ix) Public administration;

(x) Child-care administration;

(xi) Nursing;

(xii) Family studies; or

(xiii) Another human service field related to working with families and children; and

b. Two (2) years of work experience in a human services program; or

2. A bachelor's degree with a major in a discipline designated in subparagraph 1 of this paragraph, and four (4) years work experience in a human services program.

(b) A licensed child-placing agency shall have one (1) member of the social work staff designated as program director who shall hold:

1. A master's degree from a college and university in social work or in a discipline designated in paragraph (a)1 of this subsection; or

2.a. A bachelor's degree from a college and university in social work or in a discipline designated in paragraph (a)1 of this subsection; and

b. At least two (2) years professional experience in working with a child or family.

(c) A social services worker shall:

1. Be responsible for social work, counseling or planning and coordinating services to a child; and

2. Hold at least a bachelor's degree **from a college and university** in social work or a human services field.

(d) A treatment director shall:

1. Oversee the day-to-day operation of the treatment program;

2. Hold at least a master's degree **from a college and university** in a human services discipline; and

3. Have at least five (5) years total experience in mental health treatment, with a minimum of three (3) years experience in mental health treatment of children with emotional or behavioral disabilities and their families.

(e)1. A child-placing agency contracting for the service of a social services worker not on the staff of the child-placing agency shall obtain documentation that the social services worker meets the qualifications in paragraph (c) of this subsection.

2. An agreement for this provision of service shall be on file at the child-placing agency and shall specify the qualifications of the social services worker.

(f) The program director shall supervise social service staff.

(g) In a therapeutic foster care program, approval and evaluation of services shall be carried out by a person meeting the qualifications of a treatment director.

(h) Social services staff shall not carry a caseload of more than twenty (20) children.

(5) Personnel policy.

(a) A child-placing agency shall have and comply with written personnel policies and procedures.

(b) An employee shall:

1. Be at least eighteen (18) years of age;

2. Submit to a criminal background check in accordance with KRS 17.165 and a central registry check in accordance with 922 KAR 1:470; and

3. Submit to a new criminal background check in accordance with KRS 17.165 and central registry check in accordance with 922 KAR 1:470 at least once every two (2) years.

(c)1. A person against whom has been made a substantiated allegation of abuse, neglect, or exploitation of a child shall not be employed or volunteer in a position involving direct contact with a child.

2. The cabinet shall respond to allegations of abuse, neglect, or exploitation of a child in accordance with 922 KAR 1:330 and 922 KAR 1:480.

(d) A current personnel record shall be maintained for an employee that includes the following:

1. Name, address, Social Security number, date of employment, and date of birth;

2. Evidence of qualifications, including degree **from a college and university**, current registration, certification, or licensure;

3. Record of participation in staff development;

4. Record of performance evaluation;

5. Criminal records and central registry checks pursuant to paragraph (b)2 and 3 of this subsection;

6. Record of a physical exam related to employment, as specified in the child-placing agency's policies and procedures;

7. Personnel action;

8. Application for employment, resume, or contract; and

9. Evidence of personnel orientation.

(e) The child-placing agency shall have an ongoing staff development program under the supervision of a designated staff member.

(f) An employee under indictment, legally charged with felonious conduct, or subject to a cabinet investigation in accordance with 922 KAR 1:330 shall:

1. Be immediately removed from contact with a child; and

2. Not be allowed to work with the child until.

a. A prevention plan has been written and approved by a designated regional cabinet staff;

b. The person is cleared of the charge; or

c. A cabinet investigation reveals an unsubstantiated finding, if the charge resulted from an allegation of child:

(i) Abuse;

(ii) Neglect; or

(iii) Exploitation.

(g) Unless the volunteer is a practicum student, a volunteer who performs a similar function as paid staff described in subsection (4) of this section shall meet the same requirements and qualifications.

(h) Practicum students and volunteers shall submit to a background check and any other mandatory requirements listed in subsection (5)(b) and (c) of this section.

(i) A current personnel record shall be maintained for a practicum student or volunteer that includes the following:

1. Name, address, Social Security number, starting date, and date of birth,

2. Evidence of qualifications if the volunteer performs a similar function as paid staff; and

3. Criminal records and central registry checks pursuant to paragraph (h) of this subsection.

Section 3. Interstate Placement. (1) Prior to accepting a child from another state or prior to placing a child outside Kentucky, the child-placing agency shall comply with:

(a) KRS 615.030 to 615.040, Interstate Compact on Placement of Children;

(b) KRS 615 010, Interstate Compact on Juveniles; and

(c) 42 U.S.C. 671(a)(23).

(2) If a child committed to the cabinet makes a brief visit out of state, not accompanied by child-placing agency personnel, the child-placing agency shall obtain prior consent of designated regional cabinet staff.

(3) A child-placing agency shall comply with subsection (1) of this section, if a child placed with the child-placing agency visits or receives respite care in another state for a period to exceed:

(a) Thirty (30) days; or

(b) The child's school vacation period.

(4) If an emergency placement of a child into a licensed child-placing agency is made, compliance with KRS 615.030 to 615.040 shall be the responsibility of the placement source.

Section 4. Evaluation of an Applicant. (1) A child-placing agency's social services staff shall recruit a prospective foster or adoptive home.

(2) A child-placing agency shall.

(a) Complete a home study; and

(b) Approve the home prior to the placement of a child.

(3) Documentation of the home study shall include the following:

(a) A personal interview with each member of the applicant's household;

(b) An assessment of the attitude of each member of the applicant's household toward the placement of a child into the home or adoption;

(c) Observations of the functioning of the applicant's household, including interpersonal relationships and patterns of interaction;

(d) The applicant's ability to accept a child's relationship with the child's family of origin;

(e) Proof of the applicant's:

1. Identity, such as a federally or state-issued photo identification card;

2. Age of twenty-one (21) years or older; and

3. United States citizenship, such as a birth certificate, or legal alien status, such as a permanent resident card, as described in 8 U.S.C. 1151;

(f) A statement for each member of the applicant's household that shall be signed by a licensed physician or licensed health care professional verifying that the individual:

1. Is free of a communicable or infectious disease; and

2. Has no illness or condition that would present a health or safety risk to a child placed in the applicant's home;

(g) A signed statement by a licensed physician or licensed health professional regarding the applicant's physical ability to provide necessary care for a child;

(h) Verification that the applicant has a source of income separate from:

1. Foster care reimbursement; or

2. Adoption assistance;

(i) The name of three (3) personal references who:

1. Are not related to the applicant; and

2.a. Shall be interviewed by the child-placing agency staff in person or by telephone; or

b. Shall provide letters of reference for the applicant;

(j) Verification that the applicant's financial stability has been assessed and approved in accordance with a child-placing agency's written policies and procedures;

(k) Documentation of any interview with an adult child of the applicant, who does not live in the applicant's home, regarding the applicant's parenting history;

(l) If applicable, verification from the applicant regarding a:

1. Previous divorce;

2. Death of a spouse; and

3. Present marriage;

(m) If the applicant does not have custody of the applicant's own child:

1. A copy of a visitation order;

2. A copy of a child support order; and

3. Proof of current payment of child support;

(n) Proof that the child-placing agency performed background checks on the applicant and any member of the applicant's household in accordance with criteria established in 922 KAR 1:490;

(o) Documentation that the applicant has access to:

1. Transportation that meets the child's needs;

2. School;

3. Recreation;

4. Medical care; and

5. Community facilities;

(p) If an applicant or household member will be transporting a foster child, proof that the individual possesses a valid driver's license and has automobile or driver's insurance coverage;

(q) Documentation that the applicant's home:

1. Does not present a hazard to the health and safety of a child;

2. Is well heated and ventilated;

3. Complies with state and local health requirements regarding water and sanitation; and

4. Provides in- or out-of-door recreation space appropriate to the developmental needs of a child placed in the applicant's home;

(r) Verification that:

1. No more than four (4) children, including the applicant's own children, shall share a bedroom; and

2. A foster parent shall not share a bedroom with a child in the custody of a state agency, unless prior approval is obtained from the state agency;

(s) Verification that an individual bed:

1. Is provided for each child in the home;

2. If the child is under age one (1), a crib that meets the Consumer Products Safety Commission Standards pursuant to 16 C.F.R. 1508 and 1509; and

3. Is age and size appropriate for the child;

(t) Verification that:

1. Medication is locked; and

2. The following are inaccessible to a child:

a. Alcoholic beverages;

b. [and] poisonous or hazardous materials [~~are inaccessible to the child~~]; and

c [~~3.~~] Ammunition and firearms in accordance with KRS 527.100 and 527.110 [~~are locked and stored separately~~];

(u) Proof that the applicant has:

1. First aid supplies with unexpired dates available and stored in a place easily accessible by the foster parent;

2. A working telephone; and

3. A working smoke alarm within ten (10) feet of each bedroom;

(v) If a business open to the public adjoins the applicant's household, consideration of potential negative impacts on the child and family, including:

1. Hours of operation;

2. Type of business; and

3. Clientele; and

(w) If an applicant was approved to foster or adopt a child by another child placing agency or the cabinet and the applicant's home was closed, verification of the closure and a statement to indicate whether the closure was at the request of the applicant or the agency [~~previously denied or approval to foster or adopt a child by another child-placing agency or the cabinet, verification of the denial or closure, and indication of whether the closure was at the request of the foster parents or the agency~~].

(4) Exception to subsection (3)(e)2 of this section may be granted if the applicant is:

(a) Between eighteen (18) and twenty-one (21) years of age;

(b) A relative of the child to be placed in the applicant's home; and

(c) Able to meet the needs of the child to be placed in the applicant's home.

(5) For each potential applicant evaluated, the child-placing agency shall keep a written record of the findings of the home study and the evidence on which the findings are based.

(6)(a) Following approval as a foster home, the approving child-placing agency may request written approval from the state agency with custody of the child, for the foster home to provide services as a certified:

1. Provider of Supports for Community Living in accordance with 907 KAR 1:145;

2. Therapeutic foster care provider for adults in accordance with 907 KAR 3.030; or

3. Family child care home in accordance with 922 KAR 2:100.

(b) Except as provided in paragraph (a) of this subsection, an approved foster home shall not simultaneously:

1. Provide day care center services in accordance with 922 KAR 2:090, and

2. Be used as a licensed or certified health care or social service provider.

(7) An employee of the department who provides protection and permanency services shall be prohibited from becoming a foster parent or respite care provider for a child in the custody of the cabinet, unless the:

(a) Employee was a foster parent or respite care provider for the child at the time employment with the department in protection and permanency services began; and

(b) Commissioner approves, in writing, the employee to be a foster parent or respite care provider for the child.

(8) An employee of the department who provides protection and permanency services may apply to adopt a child in the custody of the cabinet if the:

(a) Employee had:

1. No relationship with the child or a parent of the child prior to the termination of parental rights in accordance with KRS Chapter 625, unless the employee is a relative of the child; or

2. Adopted a sibling of the child available for adoption; and

(b) Commissioner approves, in writing, the employee to adopt.

(9)(a) A child-placing agency shall develop written policies and procedures regarding employees of the child-placing agency serving as:

1. A foster parent;

2. An adoptive parent; or

3. A respite care provider.

(b) Policies and procedures developed in accordance with paragraph (a) of this subsection shall address the prevention or appearance of:

1. A conflict of interest; or

2. Misuse of influence.

(10) A child-placing agency may make an exception to subsection (3)(t)1 of this section if:

(a) The exception is documented in the ITP of a child placed in the foster or prospective adoptive home;

(b) The child is learning to self-administer medicine under the supervision of the foster or prospective adoptive parent or other caretaker; and

(c) Measures are taken to prevent unauthorized access by another child in the same home.

(11) If an applicant is approved as a foster home, adoptive home, or respite care provider by a state agency or another child-placing agency, a child-placing agency shall:

(a) Conduct a home study in accordance with subsections (2), (3), and (5) of this section; and

(b)1. Document that the applicant meets training requirements in accordance with Section 5, 7, 10, 13, or 19 of this administrative regulation; and

2. If an applicant lacks training in accordance with subparagraph 1 of this paragraph, the child-placing agency shall, prior to placement of a child in the home:

a. Provide training in accordance with Section 5, 7, 10, 13, or 19 of this administrative regulation; or

b.(i) Develop an individualized curriculum to fulfill unmet training needs; and

(ii) Document the applicant's compliance with the individualized curriculum.

Section 5. Orientation and Preparation of a Foster Home. A child-placing agency shall.

(1) Develop and maintain an orientation and preparation curriculum to be kept on file;

(2) Provide a minimum of twenty-four (24) hours of orientation and preparation to a prospective foster parent, to include the following:

(a)1. Child-placing agency program description with mission statement;

2. Information about the rights and responsibilities of the home; and

3. Background information about the foster child and the child's family, including information in accordance with KRS 605.090(1)(b);

(b) An example of an actual experience from a foster parent that has fostered a child;

(c) Information regarding:

1. The stages of grief;

2. Identification of the behavior linked to each stage;

3. The long-term effect of separation and loss on a child;

4. Permanency planning for a child, including independent living services;

5. The importance of attachment on a child's growth and development and how a child may maintain or develop a healthy attachment;

6. Family functioning, values, and expectations of a foster home;

7. Cultural competency;

8. How a child enters and experiences foster care, and the importance of achieving permanency; and

9 The importance of birth family and culture and helping children leave foster care,

(d) Identification of changes that may occur in the home if a placement occurs, to include:

1. Family adjustment and disruption;

2. Identity issues; and

3. Discipline issues and child behavior management; and

(e) Specific requirements and responsibilities of a foster parent.

(3) Maintain an ongoing foster home preparation and training program that:

(a) Provides a minimum of six (6) hours foster home training annually; and

(b) Maintains a record of preparation and training completed.

Section 6. Placement, Case Management, and Supervision of a Child in a Foster Home, Medically-fragile Foster Home, or Therapeutic Foster Care Home. (1) A child-placing agency shall:

(a) Place a child only in an approved foster home; and

(b) Keep a child who has been committed to the Department of Juvenile Justice for the commission of a sex crime in a separate foster home or prospective adoptive home from a child committed to the Cabinet in accordance with KRS 605 090(1), 620.090(2), and 620.230(3).

(2) A child-placing agency shall select a foster home for a child based upon the individual needs of the child, including:

(a) The child's assessment and ITP, if available;

(b) Any information concerning the child's needs in placement; and

(c) Measures to support the safety of the child, such as a placement restriction in accordance with subsection (1)(b) of this section, or another child in the foster home.

(3) A child shall participate in the intake process and in the decision that placement is appropriate, to the extent that the child's age, maturity, adjustment, family relationships, and the circumstance necessitating placement justify the child's participation.

(4)(a) The number of children residing in a foster home by a child-placing agency shall not exceed six (6), including the foster parent's own children.

(b) The number of children residing in a foster home that cares for a child in the custody of the cabinet shall not exceed five (5), including the foster parent's own children.

(5) A child-placing agency shall have a maximum of two (2) children under two (2) years of age placed in the same foster home at the same time, with the exception of a sibling group, who may remain together.

(6)(a) Justification for an exception to subsection (4)(a) or (5) of this section shall be:

1. Documented in the foster parent file; and

2. Authorized by the program director.

(b) For a foster home that cares for a child in the custody of the cabinet, the child-placing agency shall submit a written justification for an exception to subsection (4)(b) or (5) of this section in accordance with 922 KAR 1:350, Section 2(2).

(7) The child-placing agency shall:

(a) Assess a child to be placed in foster care;

(b) Within thirty (30) days of a child's placement, develop:

1. An ITP based upon the individual needs of the child and, if appropriate, the child's family, which addresses the:

a. Visitation, health, and educational needs of the child;

b. Child's permanency goals and related objectives;

c. Methods for accomplishing each goal and objective; and

d. Designation of an individual or individuals responsible for completion of each goal and objective;

2. A supervision plan for the child which:

a. Is attached to the child's ITP;

b. Identifies the current supervision needs of and expectations for the child based upon the child's recent and past:

(i) Incidents;

(ii) High-risk behaviors; and

(iii) Needs identified in the assessment conducted pursuant to paragraph (a) of this subsection;

c. Includes goals and objectives for the child's improvement with tasks assigned to the child-placing agency and foster home parent;

d. Is signed and dated by the social service worker and foster home parent; and

e. Remains a part of the child's record;

(c) Review a child's ITP and supervision plan on a quarterly basis or more frequently as the child's needs or circumstances dictate;

(d) Have a written agreement with the foster home stating the:

1. Responsibilities of the:

a. Child-placing agency; and

b. Foster home; and

2. Terms of each placement;

(e) Require a foster home to certify, in writing, that supervision from the child-placing agency or the state agency, which has custody of the child, shall be allowed,

(f) Document a placement in the foster home file;

(g) Report immediately to the state agency, which has custody of the child, if there is

1. A life-threatening accident or illness;

2. An absence without official leave;

3. A suicide attempt;

4. Criminal activity by the child requiring notification of law enforcement;

5. Death; or

6. Possession of a deadly weapon by a child,

(h) Report, if applicable, within two (2) business days to the state agency, which has custody of the child, if there is a:

1. Change in address;

2. Change in the number of people living in the home; or

3. Significant change in the foster home, such as changes in health or income status of an individual living in the foster home;

(i) Establish policies and procedures for supervision of a foster home by a worker other than the social services worker assigned to the foster home, who meets qualifications specified in section 2(4)(c) of this administrative regulation to.

1. Include:

a. Frequency of an in-home visit with the foster parent;

b. Means of supervision;

c. Methods of supervision; and

d. Personnel conducting the supervision;

2. Ensure a foster child's placement stability and safety; and

3. Be individualized, as needed, for the:

a. Child; or

b. Foster home;

(j) Identify and make available necessary supports to a foster home, including:

1. A plan for respite care in accordance with Section 13 of this administrative regulation;

2. Twenty-four (24) hour crisis intervention; and

3. A foster home support group;

(k) Assure that a child receives care and services, including independent living services:

1. In accordance with Section 16 of this administrative regulation; and

2. As prescribed by the child's needs as assessed in the child's ITP;

(l) Provide information to a foster parent regarding the behavior and development of the child placed by the child-placing agency;

(m) Inform the foster parent, in accordance with KRS 605.090(1)(b), of:

1. Inappropriate sexual acts or sexual behavior of the child as specifically known to the child-placing agency; and

2. Any behaviors of the child that indicate a safety risk for the placement;

(n) Document each effort to:

1. Protect the legal rights of the family and the child; and

2. Maintain the bond between the child and the child's family, in accordance with the child's permanency plan;

(o) Assure that a child shall have, for the child's exclusive use, clothing comparable in quality and variety to that worn by other children with whom the child may associate;

(p) Be responsible for monitoring the child's school progress and attendance;

(q) Secure psychological and psychiatric services, vocational counseling, or other services if indicated by the child's needs;

(r) Reassess and document quarterly, in the child's ITP, placement and permanency goals, including independent living services, in accordance with Section 16 of this administrative regulation;

(s) Conduct and document a face-to-face visit with the child at least once per month; and

(t) Maintain foster care records in accordance with Section 18 of this administrative regulation.

(8) Without prior notification to and written authorization from the Kentucky Interstate Compact Administrator, a child shall not be:

(a) Placed with a family that normally resides in another state; or

(b) Permitted to go with a person to take up residence in another state.

(9)(a) An approved foster home in use shall be evaluated on an annual basis for compliance with responsibilities listed in the written agreement described in subsection (7)(b) of this section.

(b) Results shall be recorded in the foster parent file.

(10) Factors that shall result in a review of a foster home shall include:

(a) Death or disability of a family member;

(b) Sudden onset of a health condition that impairs a foster parent's ability to care for a child placed in the home;

(c) Change in marital status or home address;

(d) Sudden, substantial decrease in, or loss of, income;

(e) Child birth;

(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 ITP;

5. Denial of visits, telephone or mail contacts with family members, unless authorized by 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 is:

1. Substantiated; or

2. Reveals concern regarding the care of the child;

(h) If the foster parent is cited with, charged with, or arrested due to a violation of law other than a minor traffic offense;

(i) An incident required to be reported in accordance with Sections 6(7)(g) and (h), and 12(6) and (7) of this administrative regulation; or

(j) Other factors identified by a child-placing agency that jeopardize the physical, mental, or emotional well being of the child.

(11) The documentation of a review, specified in subsection (10) of this section, shall contain:

(a) Identifying information;

(b) Current composition of the household;

(c) Description of the situation that initiated the review;

(d) An assessment of the family functioning to determine if the child's needs are met; and

(e) Corrective action that may include a recommendation for closure of the foster home.

Section 7. Orientation and Preparation of a Therapeutic Foster Care Home. (1) A child-placing agency shall:

(a) Maintain the orientation and preparation curriculum on file; and

(b) Provide a minimum of thirty-six (36) hours of orientation and preparation for a prospective therapeutic foster care parent that shall incorporate the following topic areas:

1.a. Child-placing agency program description with mission statement;

b. Information about the rights and responsibilities of the therapeutic foster care home; and

c. Background information about a foster child and the child's family;

2. An example of an actual experience of a therapeutic foster care parent that has fostered a child,

3. Stages of grief;

4. Behaviors linked to each stage of grief;

5. Long-term effects on a child from separation and loss;

6. Permanency planning for a child, including independent living services;

7. Importance of attachment on a child's growth and development and the way a child maintains and develops a healthy attachment, including attachment disorder and associated behaviors;

8. Family functioning, values, and expectations of a therapeutic foster care home;

9. Changes that may occur in the home with placement of a child regarding:

a. Family functioning;

b. Family adjustment;

c. Identity issues;

d. Discipline issues and child behavior management; and

e. Family disruption;

10. Specific requirements and responsibilities of a therapeutic foster care home;

11. Behavior management;

12. Communication skills;

13. Skill teaching;

14. Cultural competency;

15. Behavior management de-escalation techniques;

16. The dynamics of the sexually-abused child; and

17. The effect of chemical abuse or dependence by the child or the child's biological parent.

(2) A therapeutic foster care home shall receive a minimum of twenty-four (24) hours of annual training.

(3) A child-placing agency that provides therapeutic foster care shall maintain an ongoing therapeutic foster care preparation and training program that:

(a) Provides a minimum of twenty-four (24) hours of annual

training; and

(b) Maintains a record of preparation and training completed.

Section 8. Additional Requirements for Therapeutic Foster Care. (1) A therapeutic foster care home shall accommodate the needs of a child who is unable to live with the child's own family and who:

(a) May benefit from care in a family setting; and

(b)1. Has clinical or behavioral needs that exceed supports available in a foster home; or

2. Is transitioning from group care as part of the process of returning to family and community.

(2) The number of children residing in a therapeutic foster care home that does not care for a child in the custody of the cabinet, shall be limited to a total of six (6) children, including no more than two (2) therapeutic foster care children.

(3) Justification for an exception to subsection (2) of this section shall be:

(a) Documented in the therapeutic foster care parent's file; and

(b) Authorized by the treatment director.

(4) The number of children residing in a therapeutic foster care home that cares for a child in the custody of the cabinet, shall be limited to a total of four (4) children, including no more than two (2) therapeutic foster care children.

(5) The child-placing agency shall request an exception to subsection (4) of this section in accordance with 922 KAR 1:350, Section 2(2).

(6) A treatment director shall supervise a treatment team and shall participate in the development of the ITP and the quarterly case consultation.

(7) A child-placing agency shall provide or contract, as specified in KRS 199.640(5)(a)(2), for therapeutic services individualized for the child, as needed, at least two (2) times per month.

(8) A therapeutic foster care parent shall be responsible for:

(a) Participation in the development of an assessment, ITP, and supervision plan as specified in Section 6(7) of this administrative regulation;

(b) Facilitation of in-home services provided by a social services worker at least two (2) times per month;

(c) Adequate supervision of the child and implementation of components of the ITP, including daily log documentation as specified in the ITP;

(d) Working with the child-placing agency to promote stability and avoid disruption for the child;

(e) Working with the child-placing agency in the development of a plan for the smooth transition of the child to a new placement, in the event of a disruption; and

(f) Providing independent living services for a child twelve (12) years of age or older consistent with a child's ITP.

(9) Except for a child who is the legal responsibility or in the custody of the cabinet or the Department of Juvenile Justice, the child-placing agency shall be responsible for:

(a) A preplacement conference, in a nonemergency placement, for the purpose of:

1. Developing permanency goals and a discharge plan for the child, including independent living services;

2. Developing a plan for the implementation of services;

3. Identifying the treatment goals; and

4. Developing a behavior management plan if applicable; and

(b) Inviting and encouraging attendance to the preplacement conference by:

1. The prospective therapeutic foster care home;

2. A respite care provider approved in accordance with section 13(4) of this administrative regulation;

3. The child, if appropriate; and

4. The child's family.

(10) The social services worker shall:

(a) Have a first face-to-face visit with a child and therapeutic foster care parent on the day of the child's placement;

(b) Have another face-to-face visit with the therapeutic foster care parent or child within ten (10) calendar days of the child's placement;

(c) Telephone or visit, on a weekly basis, at least one (1) of the therapeutic foster care parents of each child on the therapeutic foster care worker's caseload,

(d) Visit a therapeutic foster care parent a minimum of two (2) times a month with at least one (1) visit being in the foster home;

(e) Visit the foster child face-to-face a minimum of two (2) times a month with at least one (1) visit in the therapeutic foster care home and one (1) visit outside the foster home;

(f) Carry a caseload of not more than twelve (12) therapeutic foster care children, taking into account:

1. Required responsibilities other than the case management of a child in foster care;

2. Additional support, contact, and preparation needed by a therapeutic foster care home, due to the extent of the needs of the child served; and

3. The intensity of services provided to the child and the child's family;

(g) Conduct a quarterly case consultation, including the:

1. Foster home;

2. Child's public agency worker;

3. Child-placing agency treatment director and social services worker; and

4. Child and the child's family of origin, to the extent possible;

(h) Provide or contract for therapeutic services individualized for a child at least two (2) times each month based on the child's needs assessed in the child's ITP;

(i) Identify the support needed by the foster family, including a:

1. Plan for respite care as provided in section 13 of this administrative regulation;

2. Plan for twenty-four (24) hour on-call crisis intervention; and

3. Foster home support group;

(j) Recommend and prepare an aftercare plan for a child, prior to discharge from therapeutic foster care, to ensure a successful transition; and

(k) Document a quarterly case consultation and revision to a child's ITP as determined by the case consultations.

(11) The child-placing agency shall:

(a) Meet requirements specified in Section 6(1) through (3) and (7) through (11) of this administrative regulation; and

(b) Annually reevaluate a therapeutic foster care home in accordance with Section 15 of this administrative regulation.

Section 9. Medically-fragile Child. (1) A medically-fragile child shall be:

(a) A child in the custody of the cabinet; and

(b) Determined by the cabinet to meet the medically-fragile requirements of 922 KAR 1:350.

(2) The decision to accept a medically-fragile child shall be optional to a child-placing agency.

(3) If a child placed with a child-placing agency in a non-medically-fragile foster home becomes medically-fragile in accordance with subsection (1) of this section, the commissioner or designee and child-placing agency shall reevaluate the placement and ensure the child's needs can be met.

Section 10. Preparation of a Medically-fragile Foster Home (1) A child-placing agency shall create a medically-fragile foster home only if the child-placing agency has:

(a) Staff meeting qualifications established in Section 2(4) of this administrative regulation supervising the home, who have received medically-fragile training in accordance with subsection 2(b) and (c) of this section; and

(b) A liaison established with the cabinet.

(2) A foster home may be approved to care for a medically-fragile child by a child-placing agency if the foster home:

(a) Includes a primary caregiver who is not employed outside the home, unless approved in writing by designated cabinet staff;

(b) Completes, in addition to training specified in Section 5 of this administrative regulation:

1. Twenty-four (24) hours of cabinet training to include first aid and cardiopulmonary resuscitation (CPR) certification if the foster parent is not currently certified in first aid and CPR;

2. Sixteen (16) hours of cabinet training if the foster parent is currently certified in first aid and CPR; or

3. Training approved in advance by the cabinet, in the areas of:

a. Growth and development;

b. Nutrition; and
c. Medical disabilities;
(c) Maintains certification in:
1. CPR; and
2. First aid;
(d) Is located within a:
1. One (1) hour drive of a medical hospital with an emergency room; and
2. Thirty (30) minute drive of a local medical facility; and
(e) Is evaluated in accordance with Section 4 of this administrative regulation.

(3) Professional experience related to the care of a medically-fragile child may substitute for the training requirement of the medically-fragile foster parent as specified in subsection (2)(b) and (c) of this section:
(a) Upon the approval by a designated cabinet staff; and
(b) If the foster parent is a licensed health care professional, to include a:
1. Physician as defined in KRS 311.720(9);
2. Registered nurse as defined in KRS 314.011(5);
3. Licensed practical nurse as defined in KRS 314.011(9);
4. Physician's assistant as defined in KRS 311.840(3); or
5. Advanced registered nurse practitioner as defined in KRS 314.011(7).

(4) If the cabinet determines that a child currently in the care of a foster parent approved by the child-placing agency is a medically-fragile child in accordance with Section 9(1) of this administrative regulation, then the cabinet shall prioritize the foster home's enrollment in training as specified in subsection (2)(b) and (c) of this section.

(5) An approved medically-fragile foster home may receive annual reapproval, if the foster home:
(a) Annually completes the following amount of ongoing training in content areas specified by subsection 2(b) and (c) of this section:
1. Twenty-four (24) hours if the foster parent is not currently certified in first aid and CPR; or
2. Sixteen (16) hours if the foster parent is currently certified in first aid and CPR;
(b) Completes the training before the anniversary date of approval as a medically-fragile foster home; and
(c) Continues to meet the requirements in Section 15 of this administrative regulation.

(6) Except for a sibling group or unless approved by designated cabinet staff, no more than four (4) children, including the medically-fragile foster parent's own children, shall reside in a medically-fragile foster home.

(7) Unless approved by designated cabinet staff, a:
(a) One (1) parent medically-fragile foster home shall not care for more than one (1) medically-fragile child; and
(b) Two (2) parent medically-fragile foster home shall not care for more than two (2) medically-fragile children.

(8) A child-placing agency shall request an exception to subsection (6) or (7) of this section, in accordance with 922 KAR 1:350, Section 2(2).

Section 11. Placement of a Medically-fragile Child (1)(a) In addition to training required in Section 10(2)(b) and (c) of this administrative regulation, an approved medically-fragile foster parent shall receive training on how to care for the specific needs of a medically-fragile child placed in the home.

(b) The training shall be conducted by a licensed health care professional.

(2) A medically-fragile child shall be placed in an approved medically-fragile foster home.

(3) A child-placing agency shall:
(a) Request an exception to subsection (2) of this section in accordance with 922 KAR 1:350, Section 2(2);
(b) Provide case management services:
1. As described in Section 6(1) through (3), and (7) through (11) of this administrative regulation; and
2. In accordance with the child's:
a. Health plan developed by designated cabinet staff;
b. ITP; and
c. Supervision plan;
(c) Support the child's health plan developed by designated cabinet staff, and
(d) Conduct a face-to-face visit with the child at least two (2) times per month.

Section 12. Expectations for a Foster Home, Therapeutic Foster Care Home, or Medically-fragile Foster Home. An approved foster parent or therapeutic foster care parent shall:

(1) Provide a child placed by the child-placing agency 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) Education opportunities;
(g) Nonmedical transportation;
(h) Opportunities for development consistent with the child's religious, ethnic, and cultural heritage;
(i) Adequate supervision; and
(j) Independent living services for a child twelve (12) years of age or older;

(2) Permit a child-placing agency and staff of a state agency to visit the home;

(3) Share with the child-placing agency and, if applicable, staff of the state agency which has custody of the child, information about the child placed by the child-placing agency;

(4) Notify the child-placing agency ten (10) days prior if the home is approved to provide foster or adoptive services through another private child-placing agency or the cabinet;

(5) Notify the child-placing agency prior to:
(a) Leaving the state with a child placed by the child-placing agency for more than two (2) nights; or
(b) Allowing a child placed by the child-placing agency to be absent from the foster home for more than three (3) days;

(6) Report immediately to the child-placing agency through which the child is placed, if there is:
(a) A life-threatening accident or illness;
(b) An absence without official leave;
(c) A suicide attempt;
(d) Criminal activity by the child requiring notification of law enforcement;
(e) Death; or
(f) A child's possession of a deadly weapon;

(7) Report, if applicable, within two (2) business days to the child-placing agency if there is a:
(a) Change in address;
(b) Change in the number of people living in the home;
(c) Significant change in circumstance in the foster home; or
(d) Failure of the foster child or foster parent to comply with the supervision plan;

(8) Cooperate with the child-placing agency if child-placing agency staff arranges for a child, placed in the foster home by the child-placing agency, and the child's birth family regarding:
(a) Visits;
(b) Telephone calls; or
(c) Mail;

(9) Surrender a child or children to the authorized representative of the child-placing agency or the state agency, which has custody of the child, upon request;

(10) Keep confidential all personal or protected health information as shared by the cabinet or child-placing agency, in accordance with KRS 194A.060 and 45 C.F.R. Parts 160 and 164, concerning a child placed in a home or the child's birth family;

(11) Support an assessment of the service needs, including respite care, and the development of an ITP, including the supervision plan, of a child placed by the child-placing agency;

(12) Participate in a case planning conference concerning a child placed by the child-placing agency;

(13) Cooperate with the implementation of the permanency goal established for a child placed by the child-placing agency;

(14) Ensure that a child in the custody of the cabinet receives

the child's designated per diem allowance;

(15) Provide medical care to a child placed by the child-placing agency as needed, including:

(a) Administration of medication to the child and daily documentation of the administration; and

(b) Annual physicals and examinations for the child;

(16) Treat a child placed by the child-placing agency with dignity;

(17) Report suspected incidents of child abuse, neglect, and exploitation in accordance with KRS 620.030; and

(18) Comply with general supervision and direction of the child-placing agency or, if applicable, the state agency that has custody of the child, concerning the care of the child placed by the child-placing agency.

Section 13. Respite For Foster Care, Medically-fragile Foster Care, or Therapeutic Foster Care. (1) The child-placing agency shall develop written policies and procedures to address the respite care needs of a child or a foster parent.

(2) Respite care shall not be used as a means of placement for a child.

(3) Respite care shall be in accordance with Section 3(3) of this administrative regulation.

(4) The child-placing agency shall not approve a respite care provider unless the provider meets requirements specified by Section 4(3)(e), (g), and (n) through (v) of this administrative regulation.

(5) A respite care provider shall:

(a) Receive preparation for placement of a child, including:

1. Information in accordance with KRS 605.090(1)(b); and

2. Information regarding the supervision plan of the child;

(b) Provide adequate supervision in accordance with the child's supervision plan; and

(c)1. Give relief to a foster parent caring for a child; or

2. Provide for an adjustment period for a child.

(6) A respite care provider for a medically-fragile child shall [~~meet the requirements of~~]:

(a) **Meet the requirements of** Section 10(2)(b) through (d) or 10(3) of this administrative regulation; and

(b) **Receive training on how to meet the specific needs of the medically-fragile foster child from:**

1. A licensed health care professional; or

2. The foster parent trained by a licensed health care professional [~~Section 11(1) of this administrative regulation~~].

Section 14. Private Placement Process. Except for a child in the custody of, or otherwise made the legal responsibility of the cabinet or the Department of Juvenile Justice, the following shall be the responsibility of the child-placing agency if a private placement is conducted.

(1) For a child being placed with a child-placing agency, the child-placing agency shall obtain an:

(a) Agreement for voluntary care signed by the custodian; or

(b) Order from a court of competent jurisdiction placing the child into the custody of the child-placing agency.

(2) The child-placing agency shall:

(a) Complete an intake assessment of the strengths and needs of the child and the child's family of origin; and

(b) Ascertain the appropriateness of the referral for the child.

(3)(a) The child-placing agency shall be responsible for developing an ITP individualized for a child and the child's family based on an individualized assessment of the child's and family's needs within thirty (30) days of the child's placement with the child-placing agency.

(b) The assessment shall be revised as needed.

(c) The assessment and ITP shall include the type and extent of services to be provided to the child and the child's family.

(4) Unless not in the best interest of the child, the child, parent, and foster parent shall be included in developing the assessment and ITP.

(5)(a) The foster home selected for placement shall be the most appropriate home based on the child's needs and the strengths of the foster family.

(b) The foster home shall be located as close as possible to the home of the family of origin, in order to facilitate visiting and reunification.

(6)(a) The social services worker and the foster parent shall work collaboratively to prepare the child prior to the placement.

(b) Unless a circumstance precludes preparation and the circumstance is documented in the case record, a child shall have a period of preparation prior to the placement in the foster home.

(7) The child-placing agency shall:

(a) Provide or arrange for services to support reunification for a child for whom family reunification is the goal;

(b) Assess and document the parent's capacity for reunification quarterly;

(c) Provide for review of the child in order to evaluate the progress toward achieving the child's permanency goal every six (6) months; and

(d) Assure that foster care continues to be the best placement for the child.

(8)(a) Services to the family of origin and to the child shall be adapted to their individual capacities, needs, and problems.

(b) A reasonable effort shall be made to return the child to the family of origin.

(9) Planning for the child regarding treatment program matters, including visitation, health, education, and permanency goals, shall be developed in collaboration with the:

(a) Family of origin;

(b) Treatment director;

(c) Social services worker; and

(d) Foster home.

(10)(a) The child-placing agency shall work with a foster home to promote stability and avoid disruption for a child, to include:

1. Services specified in Section 6(1) through (3), and (7) through (11) of this administrative regulation; and

2. Annual reevaluation of the foster home in accordance with Section 15 of this administrative regulation.

(b) A request for the removal of a child from a foster home shall be explored immediately and shall be documented by the social services worker.

(c) If disruption is unavoidable, the child-placing agency and foster home shall develop a plan for the smooth transition of the child to a new placement.

(11)(a) Preparation for the return of a child to the family of origin shall be supervised by a social services worker.

(b) The family shall participate in planning for the child's return.

(c) If regular contact with the child's family does not occur, a plan for the child's return shall include at least one (1):

1. Prior visit between the child and the family; and

2. Preliminary visit of the child to the child's family home.

(12) The child-placing agency shall recommend a plan for aftercare services for a child and the child's family.

Section 15. Annual Reevaluation of an Approved Adoptive Home Awaiting Placement or an Approved Foster Home. Annually, a child-placing agency shall:

(1) Conduct a personal interview in the home with an approved:

(a) Adoptive home awaiting placement; or

(b) Foster home; and

(2) Assess:

(a) Any change in the home;

(b) The ability of the home to meet the needs of a child placed in the home; and

(c) The home's continued compliance with the requirements of this administrative regulation in:

1. Section 4(3)(h), (j), and (l) through (v), and Section 4(5) through (11) of this administrative regulation, with regard to evaluation, if the home is approved as a foster or adoptive home;

2. Sections 6(9)(a) and 12 of this administrative regulation, with regard to case management and expectations, if the home is approved as a foster home;

3. Sections 5(3)(a), 7(2), or 10(5)(a) of this administrative regulation, with regard to annual training, if the home is approved as a foster home; and

4. Section 19(3) of this administrative regulation, with regard to annual training, if the home is approved as an adoptive home.

(3) After initial approval, a foster parent, an adoptive parent awaiting placement, a respite care provider, or a member of a foster or adoptive parent's household shall comply with a child-placing agency's request for a statement regarding the parent, provider, or household member's general health and medical ability to care for a child.

(4) If a prospective adoptive home is awaiting an international adoption, the child-placing agency shall conduct a reevaluation of the home once every eighteen (18) months.

Section 16. Independent Living Services. A child-placing agency shall:

(1) Provide independent living services:

(a) To a child:

1. In the custody of a state agency; and

2. Who is twelve (12) to twenty-one (21) years of age;

(b) Directly or indirectly through a foster parent with whom the child is placed;

(c) As prescribed in the child's ITP; and

(d) In accordance with 42 U.S.C. 677(a); and

(2) Teach independent living:

(a) To a child:

1. In the custody of a state agency; and

2. Sixteen (16) years of age and older; and

(b) Developed in accordance with Section 17(1)(e) of this administrative regulation.

Section 17. Independent Living Programs. (1) A child-placing agency providing independent living programming shall:

(a) Conduct and document an assessment of the child's skills and knowledge:

1. Within fourteen (14) days of a child's placement with the child-placing agency and provision of services by the agency's independent living program; and

2. Using a tool to assess:

a. Money management and consumer awareness;

b. Job search skills;

c. Job retention skills;

d. Use of and access to:

i. Community resources;

ii. Housing; and

iii. Transportation;

e. Educational planning;

f. Emergency and safety skills;

g. Legal knowledge;

h. Interpersonal skills, including communication skills;

i. Health care knowledge, including knowledge of nutrition;

j. Human development knowledge, including sexuality;

k. Management of food, including food preparation;

l. Ability to maintain personal appearance;

m. Housekeeping; and

n. Leisure activities;

(b) Develop and update quarterly a written ITP within thirty (30) calendar days of a child's placement with a child-placing agency in an independent living program, to include:

1. Educational, job training, housing, and independent living goals;

2. Objectives to accomplish a goal;

3. Methods of service delivery necessary to achieve a goal and an objective;

4. Person responsible for each activity;

5. Specific timeframes to achieve a goal and an objective;

6. Identification of a discharge plan;

7. Plan for aftercare services; and

8. Plan for services from a cooperating agency;

(c) Maintain written policies and procedures for the independent living program,

(d) Train and document the training provided to designated independent living staff within thirty (30) days of employment on:

1. Content of the independent living curriculum;

2. Use of the independent living materials;

3. Application of the assessment tool; and

4. Documentation methods used by the child-placing agency; and

(e) Maintain and teach independent living in accordance with 42 U.S.C. 677(a), including:

1. Money management and consumer awareness;

2. Job search skills;

3. Job retention skills;

4. Educational planning;

5. Community resources;

6. Housing;

7. Transportation;

8. Emergency and safety skills;

9. Legal skills;

10. Interpersonal skills, including communication skills;

11. Health care, including nutrition;

12. Human development, including sexuality;

13. Food management, including food preparation,

14. Maintaining personal appearance;

15. Housekeeping;

16. Leisure activities;

17. Voting rights and registration;

18. Registration for selective service, if applicable;

19. Self-esteem;

20. Anger and stress management;

21. Problem-solving skills; and

22. Decision-making and planning skills.

(2) A social services worker from an independent living program shall:

(a) Be responsible for a child sixteen (16) to eighteen (18) years of age in an independent living program and provide supervision in accordance with the child's supervision plan; and

(b) Be available for twenty-four (24) hours, seven (7) days a week crisis support for a child in the independent living program, regardless of the child's age; and

(c) Have:

1. Daily face-to-face contact with a child:

a. Sixteen (16) to eighteen (18) years of age; and

b. In the independent living program;

2. A minimum of one (1) face-to-face, in-home contact per week for a child:

a. Eighteen (18) to twenty-one (21) years of age; and

b. In the independent living program;

(d) Conduct a visual and exploratory review of a child's living unit at least monthly, to include a review for:

1. Safety;

2. Use of alcohol, and

3. Illegal contraband;

(e) Maintain a caseload of no more than ten (10) children, including independent living program:

1. Participants sixteen (16) to twenty-one (21) years of age; and

2. Participants' children assigned a Level of Care of III or higher; and

(f) Document annual compliance with fire and building codes for any living unit in which the agency places a child.

(3) (a) A living unit for a child in an independent living program shall be occupied by only a child or children approved to occupy the living unit by the child-placing agency.

(b) Nonresidents shall be asked to vacate the living unit.

(4) The child-placing agency shall assure and document that the living unit of a child in an independent living program:

(a) Does not present a hazard to the health and safety of the child;

(b) Is well ventilated and heated; and

(c) Complies with state and local health requirements regarding water and sanitation.

(5) The child-placing agency shall maintain documentation for each child concerning:

(a) Assistance to the child in finding and keeping in touch with family, if possible;

(b) Health care and therapeutic services received by a child,

(c) Progress each child has made in the independent living program, including independent living services received;

(d) Progress in an educational program, including vocational education;

(e) An assessment of the child's readiness to live independent-

ly; and

(f) The social services worker's contacts with the child, including observation of the child's living arrangement.

Section 18. Maintenance of a Foster Care, Medically-fragile Foster Care, or Therapeutic Foster Care Record. (1)(a) The child-placing agency shall maintain a record on each child and foster home, including medically-fragile foster homes and therapeutic foster care homes.

(b) The child's record and the foster home record shall show the reason for placement change and steps taken to ensure success.

(c) A case record shall be maintained in conformity with existing laws and administrative regulations pertaining to confidentiality, pursuant to KRS 199.430(3), 199.640, and 45 C.F.R. Parts 160 and 164.

(2) The record of the child, including information of the child's family, shall include:

(a) Identifying information for child, parent, and foster home;

(b) Commitment order or custodian's consent for admission;

(c) Birth and immunization certificate;

(d) Educational record;

(e) Medical and dental record since placement;

(f) Social history and assessment;

(g) ITP and review;

(h) Supervision plan and updates to the plan;

(i) Permanency goals, including independent living services;

(j) Incident reports, including details of the child's behavior and supervision at the time of the incident;

(k) Monthly progress notes based on the ITP and supervision plan;

(l) Quarterly revisions to the child's ITP;

(m) Correspondence with the:

1. Court;

2. Family;

3. Department for Community Based Services; or

4. Department of Juvenile Justice,

(n) Discharge report; and

(o) Aftercare plan.

(3) The foster home's record shall include documentation relating to the:

(a) Orientation and preparation of the home, including all adult caregivers in the household;

(b) Required preparation hours and the topics covered;

(c) Placement of the child;

(d) Narrative summary of the initial and annual foster home's home study;

(e) Supervision of the foster home, including critical incidents;

(f)1. Annual training requirements that are met in accordance with Section 5(3) of this administrative regulation by the foster parent and all adult caregivers in the household; or

2. If applicable, annual training requirements in accordance with Section 7(2) or 10(5)(a) of this administrative regulation;

(g) Background checks in accordance with Sections 4(3)(n) and 15(2)(c)1 of this administrative regulation;

(h) Copy of any placement exceptions granted; and

(i) A copy of the written statement of the foster home's closure completed pursuant to Section 23(3) of this administrative regulation.

(4) A child-placing agency shall:

(a) Maintain a child or foster home's record for at least three (3) years;

(b) After three (3) years:

1. Archive the record and have it transferred to one (1) of the cabinet's designated record centers; or

2. Maintain the record permanently by [at] the child-placing facility;

(c) Transfer the record to the cabinet, if:

1. The agency ceases operations; and

2. No other operational governing entity exists; and

(d) Make available all records maintained by the agency to the cabinet or its designee upon request.

Section 19. Orientation and Preparation of an Adoptive Home. A child-placing agency shall:

(1) Prepare and maintain the orientation and preparation curriculum on file;

(2) Provide orientation and preparation to a prospective adoptive home in accordance with the child-placing agency's policies and procedures to include the following:

(a) An example of an actual experience from a parent who has adopted a child;

(b) Challenging behavior characteristics of an adoptive older child;

(c) Referral resources for a developmental delay;

(d) Transition issues with focus on stages of grief, and a honeymoon period;

(e) Loss and the long-term effects on a child;

(f) Attachment and identity issues of the child;

(g) Cultural competency;

(h) Medical issues including referral resources;

(i) Family functioning, family values, and expectations of an adoptive home;

(j) Identification of changes that may occur in the family unit upon the placement of a child to include:

1. Family adjustment and disruption;

2. Identity issues; and

3. Discipline; and

(k) Financial assistance available to an adoptive home; and

(3) Ensure that an approved adoptive home awaiting the placement of a child receives adoptive home training annually in accordance with the child-placing agency's established policies and procedures.

Section 20. Adoption Placement Process. (1) A child shall not be placed for adoption until the:

(a) Adoptive home has been approved;

(b) Parental rights of the mother, legal or birth father, and putative father of the child, if not the same person as the legal father, are terminated by a circuit court order entered pursuant to KRS Chapter 625; and

(c) Child is placed with the child-placing agency for the purpose of adoption placement.

(2) A child's parent shall not be induced to terminate parental rights by a promise of financial aid or other consideration.

(3)(a) The authority granted to a child-placing agency licensed by the cabinet authorizing the agency to place a child for adoption shall not be used to facilitate an adoptive placement planned by a doctor, lawyer, clergyman, or person or entity outside the child-placing agency.

(b) The child-placing agency shall comply with provisions of 922 KAR 1.010.

(4) The following shall be obtained by the child-placing agency:

(a) A developmental history of the adoptive child to include:

1. Birth and health history;

2. Early development;

3. Characteristic ways the child responds to people and situations;

4. Any deviation from the range of normal development;

5. The experiences of the child prior to the decision to place the child for adoption;

6. Maternal attitude during pregnancy and early infancy;

7. Continuity of parental care and affection;

8. Out-of-home placement history;

9. Separation experiences; and

10. Information about the mother, legal father, and putative father, if not the same person as the legal father, and family background:

a. That may affect the child's normal development in order to determine the presence of a significant hereditary factor or pathology; and

b. Including an illness of the biological mother or father;

(b) A social history of the biological or legal parent, to include:

1. Name;

2. Age;

3. Nationality;

4. Education;

5. Religion or faith; and

6. Occupation;

(c) Information obtained from direct study and observation of the child by a:

1. Social services worker; and

2. Physician or other licensed health care professional;

(d) If indicated, information obtained from direct study and observation of the child by a:

1. Foster parent;

2. Nurse;

3. Psychologist; or

4. Other consultants; and

(e) Information from the mother, if possible, identifying the biological father, or legal father, if different from the biological father, for the purpose of:

1. Determining the father's parental rights; and

2. Establishment of possible hereditary endowments.

(5) Exception to subsection (4)(a)1 and 2 of this section may be granted, if the adoption involves a child born in a country other than the United States.

(6) If either biological or legal parent is unavailable, unwilling, or unable to assist with the completion of information necessary to comply with KRS 199.520 and 199.572, the child-placing agency shall document information, to the extent possible, from the existing case record.

(7) Prior to finalization of the adoptive placement, a medical examination shall be made by a licensed physician or other licensed health professional to determine:

(a) The state of the child's health;

(b) Any significant factor that may interfere with normal development; and

(c) The implications of any medical problem.

(8) The condition under which an adoptive home agrees to accept the child shall be decided upon, prior to placement of the child. The written agreement between the child-placing agency and the adoptive home shall embody the following provisions:

(a) The adoptive home shall agree to:

1. Comply with KRS 199.470;

2. File an adoptive petition at a time agreeable to the adoptive home and the child-placing agency; and

3. Permit supervision by the child-placing agency in accordance with the child-placing agency's policies and procedures:

a. After placement; and

b. Preceding a final judgment of adoption by the circuit court;

(b) The child-placing agency shall be responsible for providing the adoptive home with written information regarding the child's:

1. Background;

2. Medical history;

3. Current behavior; and

4. Medical information necessary to comply with KRS 199.520(4)(a); and

(c) The adoptive home and the child-placing agency shall agree that the child may be removed from the placement, at the request of either party, before the filing of the adoptive petition.

(9)(a) Preplacement visits shall be arranged for the adoptive home and a child.

(b) The pattern and number of visits shall be based on the child's:

1. Age;

2. Development; and

3. Needs.

(10) During preparation, the child-placing agency shall discuss the child's readiness to accept the selected placement with the child, in accordance with the child's age and ability to understand.

(11)(a) Unless the child-placing agency and, if applicable, the state agency which has custody of a child belonging to a sibling group, determines that it is more beneficial for siblings to be placed in separate adoptive homes, siblings who have had a relationship with each other shall be placed together.

(b) If siblings have been separated in placements:

1. The case record shall reflect a valid basis for the separation;

2. The decision to separate siblings shall be made by the executive director of the child-placing agency; and

3. Continued contact between siblings shall be maintained, if possible.

(12) A child-placing agency shall comply with Section 6(1)(b) of this administrative regulation during the process of placing a child in a prospective adoptive home.

Section 21. Supervision of an Adoptive Placement. (1) The child-placing agency placing a child shall remain responsible for the child until the adoption has been granted. This responsibility involves the following:

(a) Two (2) meetings by the social services worker with the child and the adoptive home, including both adoptive parents if not a single parent adoption, one (1) visit of which shall be in the adoptive home before filing of the adoption petition;

(b) The continuation of case management, visits, and telephone contacts based upon the needs of the child until the adoption is legally granted; and

(c) Awareness of a change in the adoptive home including health, education, or behavior.

(2) Upon request of the cabinet, the child-placing agency shall:

(a) Provide information pursuant to KRS 199.510, as necessary to report to the court to proceed with adoption;

(b) Prepare and provide the original confidential report to the court; and

(c) Forward to the cabinet a copy of:

1. The confidential report that was provided to the court; and

2. Information required by KRS 199.520 and 199.572.

(3) If the court finds the adoptive home to be unsuitable and refuses to grant a judgment, the child-placing agency shall remove the child from the home.

Section 22. Maintenance of Adoptive Case Record. (1) The child-placing agency shall maintain a case record from the time of the application for services through the completed legal adoption and termination of child-placing agency services for:

(a) A child accepted for care, and the child's family; and

(b) An adoptive applicant.

(2) The case record shall contain material on which the child-placing agency decision may be based and shall include or preserve:

(a) Information and documents needed by the court;

(b) Information about the child and the child's family;

(c) A narrative or summary of the services provided with a copy of legal and other pertinent documents; and

(d) Information gathered during the intake process including the following:

1. A description of the situation that necessitated placement of the child away from the child's family, or termination of parental rights;

2. A certified copy of the order of the circuit court terminating parental rights and committing the child to the child-placing agency for the purpose of adoption;

3. Verification of the child's birth record and the registration number;

4. A copy of the child's medical record up to the time of placement;

5. A copy of the required evaluation of the adoptive placement;

6. Date of adoptive placement;

7. A statement of the basis for the selection of this adoptive home for the child;

8. A record of after-placement services with dates of:

a. Visits;

b. Contacts;

c. Observations;

d. Filing of petition;

e. Granting of judgments; and

f. Other significant court proceedings relative to the adoption;

9. Child's adoptive name; and

10. Verification of preparation and orientation and annual training in accordance with Section 19 of this administrative regulation.

(3) If there is a need to share background information with a party to a completed adoption, or to have the benefits of information from a closed adoption record to offer services following completion of an adoption, the child-placing agency shall comply with KRS 199.570.

(4) Records on adoption that contain pertinent information shall

be:

(a) Maintained indefinitely following final placement of a child; and

(b) Sealed and secured from unauthorized scrutiny.

(5) A child-placing agency shall submit adoptive case records to the cabinet, if:

(a) The child-placing agency closes; and

(b) No other operational governing entity exists.

Section 23. Closure of an Approved Foster or Adoptive Home. (1) A foster or adoptive home shall be closed if:

(a) Sexual abuse or exploitation by a resident of the household is substantiated;

(b) Child maltreatment by a resident of the household occurs that is serious in nature or warrants the removal of a child;

(c) A serious physical or mental illness develops that may impair or preclude adequate care of the child in the home; or

(d) The home fails to meet requirements of this administrative regulation in:

1. Section 4(3)(h), (j), and (l) through (v), and Section 4(5) through (11) of this administrative regulation, with regard to evaluation, if the home is approved as a foster or adoptive home;

2. Sections 6(9)(a) and 12 of this administrative regulation, with regard to placement and case management, if the home is approved as a foster home;

3. Sections 5(3)(a), 7(2), or 10(5)(a) of this administrative regulation, with regard to annual training, if the home is approved as a foster home; and

4. Section 19(3) of this administrative regulation, with regard to annual training, if the home is approved as an adoptive home.

(2) A foster or adoptive home may be closed:

(a) In accordance with the terms specified in the written agreement between the child-placing agency and the foster or adoptive home; or

(b) In accordance with the terms specified in the written contract between the cabinet and the child-placing agency.

(3) The child-placing agency shall provide the foster or adoptive parent a written closure statement to include:

(a) Date of approval and termination; and

(b) Indication of whether the closure was at the request of the foster parents or the agency.

Section 24. Foster Care Registry. (1) A child-placing agency shall register a foster home with the cabinet, approved by the child-placing agency, to include medically-fragile foster homes and therapeutic foster care homes.

(2) Information shall be provided to the cabinet in a format prescribed by the cabinet, to include:

(a) The foster parent's:

1. Full name,

2. Social Security number; and

3. Address, including county of residence;

(b) The child-placing agency's:

1. Name; and

2. Mailing address;

(c) The date the foster home was approved; and

(d) Whether the foster home is active or inactive.

PATRICIA R. WILSON, Commissioner
JANIE MILLER, Secretary

APPROVED BY AGENCY: June 6, 2008

FILED WITH LRC: June 12, 2008 at 1 p m.

CONTACT PERSON: Jill Brown, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40601, phone (502) 564-7905, fax (502) 564-7573.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Justin Dearinger

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes standards for child-placing agencies.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to provide licensure standards for child-placing agencies in Kentucky.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing licensure standards for child-placing agencies.

(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 licensure standards for child-placing agencies in accordance with state statutes and in consideration of the safety, permanency, and well being of children in said placements.

(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 removes a standard pertaining to foster or prospective adoptive homes that prescribes firearm and ammunition storage. The standard's removal is at the request of the Administrative Regulation Review Subcommittee, to ensure conformity with the cabinet's statutory and constitutional authorities. In addition, technical corrections were made in accordance with KRS Chapter 13A and in consultation with the Children's Alliance and the cabinet's Office of Inspector General.

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary to ensure the cabinet conforms within its existing statutory and constitutional authorities.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes through its removal of a regulatory provision that exceeded the cabinet's statutory and constitutional authorities, per the request the Administrative Regulation Review Subcommittee and legal counsel guidance. The amendment will preserve the administrative regulation for continued federal and state funding.

(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 providing clarity to child-placing agencies and privately approved foster and adoptive homes regarding the standards governing the homes.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: As of March 1, 2008, there were 128 child-placing agencies in Kentucky.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The amendment to this administrative regulation does not alter the practices of individual child-placing agencies.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no new cost to a child-placing agency.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The amendment ensures that the administrative regulation is within the parameters of the cabinet's statutory and constitutional authorities.

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

(a) Initially: No new cost is associated with the cabinet's implementation of this amendment.

(b) On a continuing basis: No new cost is associated with the cabinet's implementation of this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Funds from Title IV-E of the Social Security Act and General funds are used for the implementation of this administrative regulation.

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

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

(9) TIERING: Is tiering applied? This administrative regulation is applied in a like manner statewide; thus, there is no tiering.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 16 C.F.R. 1000 to 1750, 45 C F.R. Parts 160, 164, 1355.64, 42 U.S.C. 671(a)(23)m 677(a)(1)-(6), 14901-14954

2. State compliance standards. KRS 194.050(1), 199.640(5)(a), 605.150, 615.050

3. Minimum or uniform standards contained in the federal mandate. 16 C.F.R. 1000 to 1750, 45 C.F.R. Parts 160, 164, 1355 64, 42 U.S.C. 671(a)(23)m 677(a)(1)-(6), 14901-14954

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This administrative regulation will impose no stricter requirement or additional or different responsibilities or requirements.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This administrative regulation will impose no stricter requirement or additional or different responsibilities or requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Cabinet for Health and Family Services and its organizational units, the Office of Inspector General and the Department for Community Based Services, will be impacted by this administrative regulation. The Department of Juvenile Justice will also be impacted.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194.050(1), 199 640(5)(a), 605.150, 615.050, 620 090, 620.230, 16 C.F.R. 1000 to 1750, 45 C.F.R. Parts 160, 164, 1355.64, 42 U.S.C. 671(a)(23)m 677(a)(1)-(6), 14901-14954

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will generate no new revenues.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will generate no new revenues.

(c) How much will it cost to administer this program for the first year? This administrative regulation will require no new cost.

(d) How much will it cost to administer this program for subsequent years? This administrative regulation will require no new cost.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation

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)(9), 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 secretary 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, notwithstanding a provision of state law. That section also permits the student loan guarantee agency to establish procedures for requesting and conducting a hearing related to the wage garnishment. 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 repayment 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 to in writing pursuant to paragraph (g) of this subsection);

(f) A statement of the right to inspect and copy any records relating to the debt open to inspection in accordance with KRS 61.870 through 61 884;

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

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

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

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

(5) Establishment of a written repayment schedule in accordance with subsection (3)(g) of this section shall be deemed, for purposes of subsection (3)(e) of this section, conclusive acknowledgement 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 affidavit 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 required 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 pending 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 a disqualification, stating the particular grounds upon which he claims that a fair and impartial hearing cannot be accorded.

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

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

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

b. Having a pecuniary interest in the outcome of the proceeding; or

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 conduct a review based solely upon submission of written material by both the debtor and the authority. An in-person or telephonic hearing shall be mechanically, electronically or stenographically recorded.

(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 request for the hearing. The decision shall establish the debtor's liability, if any, for repayment of the debt and the amount to be withheld from the debtor's disposable pay.

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

(c) A person, upon request, shall receive a copy of the official record at the cost of the requester. The party requesting a recording or transcript of the hearing shall be responsible for transcription costs. The official record of the hearing shall consist of:

1. All notices, pleadings, motions, and intermediate rulings;

2. Any prehearing order;

3. Evidence received and considered;

4. A statement of matters officially noticed;

5. Proffers 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 brief statement to the board responding to the petition of review. The response shall be timely filed if received by the executive director within ten (10) calendar days from receipt by the executive director of the petition for review.

(e) A petition for review of the hearing officer's decision shall contain the following information:

1. A concise statement of the reason that the petitioner asserts as the basis pursuant to paragraph (g) of this subsection for reversing, modifying or remanding the hearing officer's decision or an order of the hearing officer issued pursuant to Section 3(2)(e) of this administrative regulation;

2. A statement specifying the part of the official record that the petitioner 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.

(4) 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)1. 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.a. 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.

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

4. The authority shall provide to the hearing officer the documentation submitted in accordance with 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.

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

6. If the debtor requests a hearing, but the debtor's written statement and supporting documentation, considered from a viewpoint most favorable to the debtor, does not reflect a genuine issue of fact or prima facie defense to the legal enforceability of the authority's claim, the hearing officer, on 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.

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

(d)1. 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.

(3) Order of proceeding.

(a) The hearing officer shall:

1. Convene an in-person or telephonic hearing;

2. Identify the parties to the action and the persons participating;

3. Admit into evidence the notice required by Section 1(3) of this administrative regulation and the debtor's statement and the stipulations required by subsection (2)(b)1 and 2 of this section;

4. Solicit from the parties and dispose of any objections or motions;

5. Accept into evidence any documentary evidence not objected to;

6. Solicit opening statements; and

7. Proceed with the taking of proof.

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

(4) Rules of evidence.

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

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.

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

(6) 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 1(3)(g) of this administrative regulation).

(2) The hearing officer shall not consider as a defense a question of law or fact that has previously been adjudicated by a court of competent jurisdiction or by an independent third-party 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 the discharge. At the expiration of the period of stay, the hearing officer shall review the circumstances and.

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

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

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

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

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

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

(6)(a) If the debtor asserts as a defense a claim that withholding of 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:

Size of family unit	Poverty guideline
1	$10,400
2	$14,000
3	$17,600
4	$21,200
5	$24,800
6	$28,400
7	$32,000
8	$35,600
Each additional person	Add $3,600

[~~Size of family unit~~	~~Poverty guideline~~
~~1~~	~~$10,210~~
~~2~~	~~$13,690~~
~~3~~	~~$17,170~~
~~4~~	~~$20,650~~
~~5~~	~~$24,130~~
~~6~~	~~$27,610~~
~~7~~	~~$31,090~~
~~8~~	~~$34,570~~
~~Each additional person~~	~~Add $3,480~~]

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:

Size of family unit	Poverty guidelines
1	$12,770
2	$17,120
3	$21,470
4	$25,820
5	$30,170
6	$34,520
7	$38,870
8	$43,220
Each additional person	Add $4,350

[~~Size of family unit~~	~~Poverty guidelines~~
~~1~~	~~$12,770~~
~~2~~	~~$17,120~~
~~3~~	~~$21,470~~
~~4~~	~~$25,820~~
~~5~~	~~$30,170~~
~~6~~	~~$34,520~~
~~7~~	~~$38,870~~
~~8~~	~~$43,220~~
~~Each additional person~~	~~Add $4,350~~]

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:

Size of family unit	Poverty guidelines
1	$11,750
2	$15,750
3	$19,750
4	$23,750
5	$27,750
6	$31,750
7	$35,750
8	$39,000
Each additional person	Add $4,000

[~~Size of family unit~~	~~Poverty guidelines~~
~~1~~	~~$11,750~~
~~2~~	~~$15,750~~
~~3~~	~~$19,750~~
~~4~~	~~$23,750~~
~~5~~	~~$27,750~~
~~6~~	~~$31,750~~
~~7~~	~~$35,750~~
~~8~~	~~$39,000~~
~~Each additional person~~	~~Add $4,000~~]

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

Debtor's Available Resources	Less than $5,000	$5,000 to $9,999	$10,000 to $14,999	$15,000 to $19,999	$20,000 to $29,999	$30,000 to $39,999	$40,000 to $49,999	$50,000 to $69,999	$70,000 and over
Annual Expenditures									
Owned dwelling	2,568	1,010	1,763	2,446	2,879	4,297	5,032	7,092	13,575
Rented dwelling	3,227	3,523	3,580	3,841	3,946	3,745	3,431	2,732	1,685
Other lodging	248	89	85	121	225	248	402	416	1,538
Utilities, fuels, and public services	1,632	1,569	1,984	2,641	2,749	2,954	3,356	3,796	4,912
Household services	320	177	286	402	403	474	579	682	1,689
Housekeeping and miscellaneous supplies	144	312	257	294	392	454	528	604	986
Household furnishing and equipment	686	341	451	565	714	975	1,072	1,543	2,827

Vehicle purchases (net outlay)	1,123	225	259	640	1,660	1,711	2,192	3,151	5,536
Gasoline and motor oil	715	570	616	897	1,195	1,474	1,851	2,131	2,851
Vehicle maintenance and repairs	261	313	285	342	409	468	574	678	1,040
Vehicle insurance	241	250	321	512	664	684	884	1,033	1,436
Vehicle lease, license and other charges	191	98	119	199	278	340	477	629	1,163
Public transportation	335	245	208	292	345	341	456	504	1,206

[Debtor's Available Resources	Less than $5,000	$5,000 to $9,999	$10,000 to $14,999	$15,000 to $19,999	$20,000 to $29,999	$30,000 to $39,999	$40,000 to $49,999	$50,000 to $69,999	$70,000 and over
Annual Expenditures									
Owned dwelling	1,647	903	1,694	2,905	2,593	3,949	4,743	6,781	12,818
Rented dwelling	2,768	3,089	3,341	3,082	3,707	3,425	3,097	2,767	1,732
Other lodging	148	65	44	85	197	237	329	421	1,382
Utilities, fuels, and public services	1,352	1,499	1,883	2,387	2,596	2,805	3,146	3,548	4,590
Household services	238	190	566	341	526	445	432	610	1,477
Housekeeping and miscellaneous supplies	304	287	275	234	396	415	545	594	1,010
Household furnishing and equipment	758	335	407	540	733	966	1,086	1,458	3,031
Vehicle purchases (net outlay)	949	438	895	1,115	2,082	1,666	2,690	3,805	5,172
Gasoline and motor oil	605	515	567	742	996	1,262	1,605	1,890	2,436
Vehicle maintenance and repairs	306	328	231	276	425	373	513	692	995
Vehicle insurance	275	306	327	554	675	744	943	1,111	1,556
Vehicle lease, license and other charges	160	103	118	144	194	296	370	570	1,173
Public transportation	255	176	206	218	359	374	464	468	1,266]

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:

	New York	Philadelphia	Boston
Owned dwellings	8,613	6,748	8,351
Rented dwellings	4,424	2,510	3,020
Other lodging	812	464	885
Utilities, fuels, and public services	3,709	3,771	3,590
Household services	1,019	877	918
Housekeeping and miscellaneous supplies	599	634	584
Household furnishings and equipment	1,689	1,413	1,574
Vehicle purchases (net outlay)	2,416	2,661	4,011
Gasoline and motor oil	1,798	1,783	1,958
Other vehicle expenses (repairs, insurance, lease, license, and other charges)	2,555	2,227	2,625
Public transportation	1,022	421	576

	[New York	Philadelphia	Boston	Pittsburgh
Owned dwellings	8,277	6,344	7,882	4,454
Rented dwellings	4,245	2,470	2,899	1,524
Other lodging	749	475	583	451
Utilities, fuels, and public services	3,528	3,600	3,169	3,103

~~Household services~~	~~957~~	~~687~~	~~917~~	~~563~~
~~Housekeeping and miscellaneous supplies~~	~~579~~	~~628~~	~~684~~	~~549~~
~~Household furnishings and equipment~~	~~1,730~~	~~1,709~~	~~1,670~~	~~1,386~~
~~Vehicle purchases (net outlay)~~	~~2,316~~	~~3,802~~	~~3,759~~	~~3,307~~
~~Gasoline and motor oil~~	~~1,495~~	~~1,477~~	~~1,747~~	~~1,538~~
~~Other vehicle expenses (repairs, insurance, lease, license, and other charges)~~	~~2,716~~	~~2,310~~	~~2,502~~	~~2,218~~
~~Public transportation~~	~~1,054~~	~~495~~	~~579~~	~~393]~~

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 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:

Debtor's Available Resources	Less than $5,000	$5,000 to $9,999	$10,000 to $14,999	$15,000 to $19,999	$20,000 to $29,999	$30,000 to $39,999	$40,000 to $49,999	$50,000 to $69,999	$70,000 and over
Annual Expenditures									
Owned dwelling	1,698	1,051	1,467	2,110	3,002	3,633	4,994	6,208	11,244
Rented dwellings	2,255	2,350	2,404	2,434	2,350	2,351	2,007	1,418	810
Other lodging	323	174	157	170	158	234	281	448	1,221
Utilities, fuels and public services	1,376	1,563	2,157	2,419	2,779	2,894	3,201	3,590	4,380
Household operations services	197	185	251	366	372	458	558	736	1,814
Housekeeping and miscellaneous supplies	245	239	267	388	355	453	544	626	1,003
Household furnishings and equipment	511	549	510	651	772	1,037	1,538	1,595	3,229
Vehicle purchases (net outlay)	1,120	511	898	728	1,707	1,757	1,856	3,970	5,352
Gasoline and motor oil	817	741	943	1,181	1,453	1,721	1,974	2,442	3,179
Vehicle maintenance and repairs	198	217	279	332	429	612	572	752	990
Vehicle insurance	205	284	426	438	613	673	869	1,029	1,264
Vehicle lease, license, and other charges	117	179	162	259	274	348	502	576	991
Public transportation	111	130	104	131	165	236	190	319	875

~~[Debtor's Available Resources~~	~~Less than $5,000~~	~~$5,000 to $9,999~~	~~$10,000 to $14,999~~	~~$15,000 to $19,999~~	~~$20,000 to $29,999~~	~~$30,000 to $39,999~~	~~$40,000 to $49,999~~	~~$50,000 to $69,999~~	~~$70,000 and over~~
~~Annual Expenditures~~									
~~Owned dwelling~~	~~2,090~~	~~944~~	~~1,613~~	~~2,096~~	~~2,642~~	~~3,612~~	~~4,910~~	~~6,005~~	~~10,883~~
~~Rented dwellings~~	~~2,171~~	~~2,337~~	~~2,280~~	~~2,350~~	~~2,186~~	~~2,094~~	~~1,759~~	~~1,449~~	~~593~~
~~Other lodging~~	~~224~~	~~128~~	~~119~~	~~111~~	~~181~~	~~245~~	~~289~~	~~484~~	~~1,260~~
~~Utilities, fuels and public services~~	~~1,514~~	~~1,495~~	~~2,044~~	~~2,216~~	~~2,562~~	~~2,829~~	~~3,020~~	~~3,396~~	~~4,226~~
~~Household operations services~~	~~208~~	~~157~~	~~293~~	~~332~~	~~408~~	~~429~~	~~554~~	~~676~~	~~1,515~~
~~Housekeeping and miscellaneous supplies~~	~~276~~	~~192~~	~~315~~	~~396~~	~~361~~	~~504~~	~~554~~	~~750~~	~~1,032~~
~~Household furnishings and equipment~~	~~459~~	~~495~~	~~382~~	~~614~~	~~792~~	~~1,220~~	~~1,523~~	~~1,779~~	~~3,473~~
~~Vehicle purchases (net outlay)~~	~~1,509~~	~~803~~	~~912~~	~~705~~	~~2,182~~	~~2,242~~	~~2,756~~	~~4,535~~	~~5,599~~
~~Gasoline and motor oil~~	~~730~~	~~623~~	~~856~~	~~1,094~~	~~1,265~~	~~1,672~~	~~1,746~~	~~2,158~~	~~2,764~~
~~Vehicle maintenance and repairs~~	~~218~~	~~179~~	~~372~~	~~329~~	~~427~~	~~659~~	~~572~~	~~754~~	~~1,018~~
~~Vehicle insurance~~	~~245~~	~~277~~	~~435~~	~~446~~	~~660~~	~~742~~	~~903~~	~~1,055~~	~~1,384~~
~~Vehicle lease, license, and other charges~~	~~158~~	~~90~~	~~140~~	~~230~~	~~247~~	~~375~~	~~432~~	~~563~~	~~1,041~~
~~Public transportation~~	~~247~~	~~127~~	~~100~~	~~107~~	~~154~~	~~189~~	~~221~~	~~371~~	~~804]~~

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:

	Chicago	Detroit	Minneapolis St Paul	Cleveland
Owned dwelling	8,448	7,710	8,879	5,659
Rented dwelling	2,573	1,543	2,004	2,250
Other lodging	733	645	767	636
Utilities, fuels, and public services	3,620	3,794	3,245	3,624
Household services	1,096	823	2,466	546

Housekeeping and miscellaneous supplies	695	588	651	550
Household furnishings and equipment	1,893	1,727	2,368	1,388
Vehicle purchases (net outlay)	3,352	2,252	3,593	2,965
Gasoline and motor oil	2,092	2,405	2,031	1,825
Other vehicle expenses (repairs, insurance, lease, license, and other charges	2,302	3,585	2,618	2,487
Public transportation	706	411	673	318

	[Chicago	Detroit	Minneapolis St. Paul	Cleveland	St. Louis
Annual Expenditures					
Owned dwelling	8,510	7,389	8,463	5,333	5,568
Rented dwelling	2,138	1,462	1,896	1,613	1,494
Other lodging	792	805	886	614	558
Utilities, fuels, and public services	3,541	3,511	3,070	3,412	3,251
Household services	1,063	864	1,126	434	921
Housekeeping and miscellaneous supplies	792	568	810	570	581
Household furnishings and equipment	2,124	1,890	3,090	1,373	2,035
Vehicle purchases (net outlay)	4,013	2,914	3,140	2,056	4,095
Gasoline and motor oil	1,754	2,129	1,853	1,449	1,853
Other vehicle expenses (repairs, insurance, lease, license, and other charges	2,464	3,759	2,826	2,328	2,287
Public transportation	644	444	731	263	415]

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:

Debtor's Available Resources	Less than $5,000	$5,000 to $9,999	$10,000 to $14,999	$15,000 to $19,999	$20,000 to $29,999	$30,000 to $39,999	$40,000 to $49,999	$50,000 to $69,999	$70,000 and over
Owned dwelling	1,960	1,069	1,503	1,815	2,410	3,349	4,091	5,399	10,884
Rented dwelling	1,918	2,258	2,202	2,413	2,436	2,594	2,492	1,986	1,209
Other lodging	228	61	79	80	125	179	211	266	953
Utilities, fuels, and other charges	2,207	2,087	2,370	2,664	2,834	3,173	3,348	3,753	4,577
Household services	272	211	326	371	435	545	609	802	1,710
Housekeeping and miscellaneous supplies	358	341	312	373	414	447	537	695	991
Household furnishings and equipment	745	356	682	695	823	1,081	1,317	1,739	3,028
Vehicle purchases (net outlay)	966	633	1,016	1,480	2,652	3,169	2,912	4,124	6,588
Gasoline and motor oil	1,021	834	1,091	1,364	1,675	2,080	2,288	2,722	3,280
Vehicle maintenance and repairs	314	194	306	332	436	509	544	670	1,065
Vehicle insurance	326	281	428	538	687	815	931	1,058	1,317
Vehicle lease, license, and other charges	105	65	75	103	172	224	215	340	612
Public transportation	74	100	89	101	126	184	194	269	707

[Debtor's Available Resources	Less than $5,000	$5,000 to $9,999	$10,000 to $14,999	$15,000 to $19,999	$20,000 to $29,999	$30,000 to $39,999	$40,000 to $49,999	$50,000 to $69,999	$70,000 and over
Owned dwelling	1,651	1,017	1,398	1,676	2,161	3,228	4,049	5,210	10,421
Rented dwelling	2,044	1,912	1,936	2,183	2,364	2,368	2,098	1,858	1,092
Other lodging	211	82	80	69	144	181	212	266	924
Utilities, fuels, and other charges	1,756	1,819	2,264	2,442	2,652	2,913	3,186	3,408	4,312
Household services	183	174	284	317	423	490	576	745	1,569
Housekeeping and miscellaneous supplies	304	246	304	412	394	466	539	613	910
Household furnishings and equipment	662	368	619	711	812	1,160	1,312	1,489	3,207
Vehicle purchases (net	433	674	770	1,332	2,569	2,941	3,338	4,642	5,985

~~outlay)~~									
~~Gasoline and motor oil~~	~~894~~	~~727~~	~~954~~	~~1,147~~	~~1,456~~	~~1,791~~	~~1,956~~	~~2,233~~	~~2,744~~
~~Vehicle maintenance and repairs~~	~~206~~	~~204~~	~~237~~	~~530~~	~~439~~	~~452~~	~~523~~	~~629~~	~~1,024~~
~~Vehicle insurance~~	~~301~~	~~264~~	~~433~~	~~623~~	~~729~~	~~885~~	~~978~~	~~1,138~~	~~1,425~~
~~Vehicle lease, license, and other charges~~	~~114~~	~~66~~	~~65~~	~~120~~	~~192~~	~~240~~	~~210~~	~~305~~	~~577~~
~~Public transportation~~	~~78~~	~~78~~	~~67~~	~~95~~	~~130~~	~~156~~	~~216~~	~~253~~	~~715]~~

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:

	Washington, D.C.	Baltimore	Atlanta	Miami	Dallas Forth Worth	Houston
Owned dwelling	11,628	7,744	6,467	6,385	6,793	6,501
Rented dwelling	3,765	2,464	2,523	3,445	2,478	2,293
Other lodging	582	605	549	222	611	634
Utilities, fuels, and public services	3,827	3,424	3,773	3,421	4,424	4,179
Household services	1,447	883	990	856	1,140	1,181
Housekeeping and miscellaneous supplies	603	503	548	532	714	732
Household furnishings and equipment	2,206	1,440	1,307	1,065	1,693	1,679
Vehicle purchases (net outlay)	2,133	2,929	3,146	3,199	3,919	5,305
Gasoline and motor oil	1,958	2,073	2,124	2,069	2,410	2,743
Other vehicle expenses (repairs, insurance, lease, license, and other charges)	2,503	2,076	1,965	2,480	2,816	3,068
Public transportation	747	476	364	437	517	519

	~~[Washington, D.C.~~	~~Baltimore~~	~~Atlanta~~	~~Miami~~	~~Dallas Forth Worth~~	~~Houston~~
~~Owned dwelling~~	~~10,250~~	~~6,644~~	~~6,019~~	~~6,150~~	~~6,818~~	~~6,373~~
~~Rented dwelling~~	~~3,178~~	~~2,366~~	~~2,202~~	~~3,027~~	~~2,147~~	~~2,255~~
~~Other lodging~~	~~570~~	~~476~~	~~276~~	~~289~~	~~488~~	~~617~~
~~Utilities, fuels, and public services~~	~~3,618~~	~~2,944~~	~~3,430~~	~~3,140~~	~~3,833~~	~~3,877~~
~~Household services~~	~~1,326~~	~~614~~	~~717~~	~~741~~	~~929~~	~~1,067~~
~~Housekeeping and miscellaneous supplies~~	~~567~~	~~417~~	~~518~~	~~525~~	~~645~~	~~653~~
~~Household furnishings and equipment~~	~~2,015~~	~~1,253~~	~~1,184~~	~~936~~	~~1,845~~	~~1,767~~
~~Vehicle purchases (net outlay)~~	~~2,758~~	~~2,052~~	~~2,359~~	~~2,013~~	~~3,587~~	~~4,584~~
~~Gasoline and motor oil~~	~~1,726~~	~~1,541~~	~~1,695~~	~~1,633~~	~~1,982~~	~~2,249~~
~~Other vehicle expenses (repairs, insurance, lease, license, and other charges)~~	~~2,601~~	~~1,844~~	~~1,748~~	~~2,284~~	~~2,799~~	~~3,107~~
~~Public transportation~~	~~790~~	~~363~~	~~242~~	~~353~~	~~469~~	~~386]~~

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

Debtor's Available Resources	Less than $5,000	$5,000 to $9,999	$10,000 to $14,999	$15,000 to $19,999	$20,000 to $29,999	$30,000 to $39,999	$40,000 to $49,999	$50,000 to $69,999	$70,000 and over
Annual Expenditures									
Owned dwelling	2,277	1,451	1,921	2,514	2,929	4,023	5,335	7,578	15,025
Rented dwelling	3,667	4,125	3,988	3,687	4,502	4,305	4,101	4,180	2,380
Other lodging	292	97	100	176	175	232	330	496	1,504
Utilities, fuels, and public services	1,615	1,439	1,606	1,920	2,285	2,472	2,894	3,192	4,154
Household services	361	250	373	355	423	518	882	850	1,886
Housekeeping and miscellaneous supplies	287	320	341	426	430	523	544	719	954
Household furnishings and equipment	491	491	602	1,107	1,128	1,584	1,801	1,795	4,032
Vehicle purchases (net outlay)	1,169	1,294	1,263	1,109	2,212	2,846	3,795	4,539	7,584
Gasoline and motor oil	1,097	748	976	1,200	1,570	1,847	2,137	2,527	3,314
Vehicle maintenance and repairs	342	198	333	541	481	631	739	970	1,302
Vehicle insurance	378	295	380	470	658	830	1,034	1,143	1,424
Vehicle lease, license, and other charges	427	206	152	183	201	305	436	501	1,016
Public transportation	334	212	200	343	268	353	434	752	1,275

[Debtor's Available Resources	Less than $5,000	$5,000 to $9,999	$10,000 to $14,999	$15,000 to $19,999	$20,000 to $29,999	$30,000 to $39,999	$40,000 to $49,999	$50,000 to $69,999	$70,000 and over
Annual Expenditures									
Owned dwelling	1,617	995	1,899	2,041	2,830	3,686	4,947	7,193	13,321
Rented dwelling	3,102	3,372	3,589	3,882	4,338	4,088	3,935	3,046	2,108
Other lodging	322	237	204	267	196	216	277	461	1,277
Utilities, fuels, and public services	1,236	1,318	1,602	1,854	2,209	2,438	2,770	3,041	3,969
Household services	232	173	351	328	429	503	623	792	1,859
Housekeeping and miscellaneous supplies	297	228	352	496	393	561	543	677	895
Household furnishings and equipment	445	442	711	937	984	1,618	1,637	1,893	3,779
Vehicle purchases (net outlay)	754	1,125	1,282	1,524	2,387	2,904	3,533	4,858	7,722
Gasoline and motor oil	796	667	916	1,061	1,402	1,687	1,964	2,284	2,936
Vehicle maintenance and repairs	302	276	283	521	523	706	727	935	1,354
Vehicle insurance	306	302	410	515	704	916	1,087	1,182	1,484
Vehicle lease, license, and other charges	121	131	158	199	222	317	428	446	1,005
Public transportation	195	144	163	305	299	326	371	599	1,212]

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:

	Los Angeles	San Francisco	San Diego	Seattle	Phoenix
Owned dwelling	8,994	12,442	9,517	8,515	6,249
Rented dwelling	4,775	5,112	5,374	2,796	2,456
Other lodging	543	1,290	763	968	573
Utilities, fuels, and public services	2,996	2,925	3,001	3,046	3,348
Household services	1,235	1,574	1,830	733	899
Housekeeping and miscellaneous supplies	643	625	499	611	784
Household furnishings and equipment	2,004	2,414	2,049	2,473	2,158
Vehicle purchases (net outlay)	4,443	3,492	4,959	4,145	5,422
Gasoline and motor oil	2,566	2,309	2,542	2,221	2,217
Other vehicle expenses (repairs, insurance, lease, license, and other charges)	2,980	3,261	2,753	2,950	2,832
Public transportation	727	1,017	862	810	493

	[Los Angeles	San Francisco	San Diego	Portland	Seattle	Honolulu	Anchorage	Phoenix	Denver
Owned dwelling	8,122	10,068	9,118	6,650	7,144	6,516	7,814	5,911	6,613
Rented dwelling	4,383	4,928	4,627	2,535	2,737	3,960	2,850	2,100	2,936
Other lodging	524	951	767	677	860	411	727	402	530
Utilities, fuels, and public services	2,908	2,711	2,767	2,878	2,769	2,813	3,228	3,057	3,013
Household services	1,224	1,384	1,561	933	725	692	985	984	722
Housekeeping and miscellaneous supplies	632	634	646	553	706	817	771	605	548
Household furnishings and equipment	2,119	2,210	1,999	1,813	2,541	2,191	2,388	1,659	1,411
Vehicle purchases (net outlay)	4,996	3,347	5,681	3,964	3,897	4,768	6,082	5,490	3,529
Gasoline and motor oil	2,312	1,922	2,094	1,742	1,914	1,658	2,157	1,769	1,755
Other vehicle expenses (repairs, insurance, lease, license, and other charges)	3,029	3,296	2,587	2,542	2,813	2,427	3,239	2,911	2,573
Public transportation	635	953	939	596	867	1,069	1,119	380	789]

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

Debtor's Available Resources	Less	$5,000	$10,000	$15,000	$20,000	$30,000	$40,000	$50,000	$70,000

	than $5,000	to $9,999	to $14,999	to $19,999	to $29,999	to $39,999	to $49,999	to $69,999	and over
Food	2,447	2,012	2,275	2,592	2,775	3,342	3,769	4,666	5,561
Apparel	841	537	485	638	721	1,075	1,053	1,705	2,292
Health insurance	383	457	1,031	1,249	1,077	897	991	974	1,153
Medical services	168	182	322	400	461	449	435	572	968
Prescription drugs	154	223	414	549	446	331	332	472	391
Medical supplies	47	37	59	88	73	55	79	76	113
Personal care products and services	197	180	242	320	312	381	462	472	660
Education	1,312	526	432	240	301	359	397	348	785
Life and other personal insurance	38	66	131	119	134	123	154	214	447

[Debtor's Available Resources	Less than $5,000	$5,000 to $9,999	$10,000 to $14,999	$15,000 to $19,999	$20,000 to $29,999	$30,000 to $39,999	$40,000 to $49,999	$50,000 to $69,999	$70,000 and over
Food	2,295	1,938	2,333	2,567	2,827	3,343	3,882	4,502	5,497
Apparel	814	504	536	644	733	1,043	1,171	1,671	2,592
Health insurance	339	556	1,018	1,077	1,001	875	969	877	1,107
Medical services	234	170	360	377	468	378	435	516	1,004
Prescription drugs	171	275	495	506	410	334	355	345	431
Medical supplies	36	44	60	69	64	88	79	88	144
Personal care products and services	202	189	244	287	336	371	472	490	703
Education	1,375	638	510	374	332	349	427	358	1,097
Life and other personal insurance	44	64	124	117	122	145	218	228	519]

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

Debtor's Available Resources	Less than $5,000	$5,000 to $9,999	$10,000 to $14,999	$15,000 to $19,999	$20,000 to $29,999	$30,000 to $39,999	$40,000 to $49,999	$50,000 to $69,999	$70,000 and over
Annual Expenditures									
Food	3,601	4,122	3,812	4,069	4,358	4,617	5,179	5,881	8,340
Apparel	1,372	1,360	994	789	1,045	1,074	1,299	1,695	2,787
Health insurance	1,162	858	1,136	1,544	1,935	1,933	2,015	1,876	2,024
Medical services	586	367	439	497	603	672	647	693	1,176
Prescription Drugs	395	390	490	618	753	823	712	708	748
Medical supplies	68	43	56	78	131	140	131	146	182
Personal care products and services	285	252	262	312	372	442	467	603	931
Education	553	191	510	144	226	329	382	531	1,409
Life and other personal insurance	135	98	106	204	233	257	321	361	681

[Debtor's Available Resources	Less than $5,000	$5,000 to $9,999	$10,000 to $14,999	$15,000 to $19,999	$20,000 to $29,999	$30,000 to $39,999	$40,000 to $49,999	$50,000 to $69,999	$70,000 and over
Annual Expenditures									
Food	4,099	3,384	3,578	3,664	4,152	3,624	5,366	5,838	8,301
Apparel	963	1,091	1,073	727	910	1,048	1,345	1,509	2,063
Health insurance	1,090	913	1,069	1,580	1,679	1,731	1,892	1,708	1,869
Medical services	82	77	55	101	96	136	116	165	177
Personal care products and services	312	220	272	353	419	446	548	618	941
Education	597	326	468	200	304	274	466	647	1,672
Life and other personal insurance	153	140	178	231	263	339	388	462	745]

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:

Debtor's Available Resources	Less than $5,000	$5,000 to $9,999	$10,000 to $14,999	$15,000 to $19,999	$20,000 to $29,999	$30,000 to $39,999	$40,000 to $49,999	$50,000 to $69,999	$70,000 and over
Food	4,227	3,500	4,370	4,319	4,860	5,385	6,294	7,137	9,163
Apparel	1,059	942	1,337	1,069	1,815	2,241	1,840	2,196	3,141
Health insurance	453	397	492	664	904	1,177	1,377	1,532	1,962
Medical services	296	89	99	218	265	389	778	614	1,103
Prescription drugs	186	187	290	254	350	496	538	556	636
Medical supplies	22	36	30	32	51	55	114	127	223
Personal care products and services	297	195	312	348	311	456	620	588	954

Education	1,193	389	236	235	436	491	448	903	2,294
Life and other personal insurance	102	92	86	103	160	181	320	352	710

[Debtor's Available Resources	Less than $5,000	$5,000 to $9,999	$10,000 to $14,999	$15,000 to $19,999	$20,000 to $29,999	$30,000 to $39,999	$40,000 to $49,999	$50,000 to $69,999	$70,000 and over
Food	5,177	3,806	4,081	4,652	4,872	5,570	5,842	6,855	9 000
Apparel	1,539	1,146	1,414	1,538	1,714	2,096	1,682	2,104	3,156
Health insurance	410	392	459	462	977	1,147	1,475	1,567	1,964
Medical services	299	137	156	282	450	507	657	681	1,187
Prescription drugs	203	206	299	275	367	493	469	541	603
Medical supplies	30	34	20	36	46	58	143	114	173
Personal care products and services	386	289	342	349	327	440	552	550	931
Education	541	307	238	192	336	413	375	733	2,228
Life and other personal insurance	156	63	117	1130	140	196	287	355	838]

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:

Debtor's Available Resources	Less than $10,000	$10,000 to $14,999	$15,000 to $19,999	$20,000 to $29,999	$30,000 to $39,999	$40,000 to $49,999	$50,000 to $69,999	$70,000 and over
Food	5,803	5,305	4,887	6,212	6,278	6,242	8,209	10,601
Apparel	2,135	1,477	1,518	1,845	1,791	2,185	2,339	3,611
Health insurance	671	453	585	629	951	1,166	1,669	1,889
Medical services	242	111	282	373	390	574	686	1,085
Prescription drugs	251	211	227	282	329	344	384	576
Medical supplies	42	37	36	47	55	66	85	158
Personal care products and services	354	282	334	469	432	438	718	990
Education	472	422	419	288	376	719	945	2,424
Life and other personal insurance	155	102	99	114	211	202	360	762

[Debtor's Available Resources	Less than $10,000	$10,000 to $14,999	$15,000 to $19,999	$20,000 to $29,999	$30,000 to $39,999	$40,000 to $49,999	$50,000 to $69,999	$70,000 and over
Food	5,541	4,959	6,369	5,840	6,477	6,184	8,150	10,444
Apparel	1,714	1,636	1,729	1,696	2,057	1,623	2,274	3,671
Health insurance	595	494	526	708	983	1,311	1,686	1,812
Medical services	151	139	285	282	392	573	767	1,027
Prescription drugs	142	226	305	244	319	406	384	529
Medical supplies	55	22	43	57	76	86	106	164
Personal care products and services	408	335	369	496	453	490	630	1,008
Education	263	258	440	301	365	563	813	2,588
Life and other personal insurance	80	125	152	122	236	268	409	807]

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

Debtor's Available Resources	Less than $10,000	$10,000 to $14,999	$15,000 to $19,999	$20,000 to $29,999	$30,000 to $39,999	$40,000 to $49,999	$50,000 to $69,999	$70,000 and over
Food	5,076	6,586	4,786	5,448	6,517	7,401	8,309	11,962
Apparel	2,562	1,944	1,758	1,668	2,072	2,289	2,503	3,905
Health insurance	319	394	515	593	791	1,028	1,283	1,760
Medical services	134	162	320	323	763	1,071	701	1,108
Prescription drugs	173	174	185	240	262	345	410	505
Medical supplies	26	29	17	45	77	77	91	155
Personal care products and services	351	412	305	383	497	503	613	921
Education	813	153	325	335	488	525	738	2,904
Life and other personal insurance	322	101	122	127	169	225	301	923

[Debtor's Available Resources	Less than $10,000	$10,000 to $14,999	$15,000 to $19,999	$20,000 to $29,999	$30,000 to $39,999	$40,000 to $49,999	$50,000 to $69,999	$70,000 and over
Food	4,743	6,985	5,887	5,623	6,471	7,732	8,161	11,242
Apparel	1,374	2,330	1,634	1,831	2,246	2,184	2,443	4,052
Health insurance	368	221	532	569	836	1,087	1,320	1,868
Medical services	88	217	355	260	698	1,021	663	1,117
Prescription drugs	207	187	166	216	238	365	352	617

~~Medical supplies~~	~~25~~	~~21~~	~~24~~	~~59~~	~~56~~	~~79~~	~~93~~	~~180~~
~~Personal care products and services~~	~~360~~	~~535~~	~~275~~	~~3443~~	~~490~~	~~585~~	~~580~~	~~966~~
~~Education~~	~~516~~	~~198~~	~~252~~	~~326~~	~~313~~	~~657~~	~~788~~	~~2,575~~
~~Life and other personal insurance~~	~~286~~	~~110~~	~~86~~	~~115~~	~~233~~	~~254~~	~~322~~	~~1,092~~]

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

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

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

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

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

(6) The employer shall have no liability or further responsibility after 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 served upon an employer, receipt shall be rebuttably presumed if:

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

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

DR. SARAH LAWS, Chair

APPROVED BY AGENCY: June 10, 2008

FILED WITH LRC: June 13, 2008 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 21, 2008, 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 July 31, 2008. 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: Ms. Diana L. Barber, General Counsel, Kentucky Higher Education Assistance Authority, P.O. Box 798, Frankfort, Kentucky 40602, phone (502) 696-7298, fax (502) 696-7293.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Diana L. Barber, General Counsel

(1) Provide a brief summary of.

(a) What this administrative regulation does: This administrative regulation establishes 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 to the requirements of federal and state law that authorize the Authority to promulgate regulations establishing the procedures for the conducting 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 calendar year 2007, approximately 1,622 notices of wage garnishment were sent and received by student loan borrowers. During the same period, 29 of those student loan borrowers requested a hearing regarding the wage garnishment. Of the 29 hearing requests, 25 of the hearings were requested on the grounds of extreme financial hardship.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take in order to comply with this administrative regulation or amendment: Each defaulted student loan borrower who objects to the garnishment of his/her wages on the basis of extreme financial hardship will be required to complete a request for hearing form as well as an affidavit of finances in order to establish his/her claim.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no cost to the entities noted above as all costs associated with the hearing request process are borne by the Authority.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Those borrowers who complete the hearing request form and affidavit of finances will receive a hearing on the issue of whether garnishment of their wages would constitute an extreme financial hardship.

(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 financial information to the Authority are provided to the borrowers at no cost to the borrower. The Authority bears any costs associated with the request for hearing process.

(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: 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 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.

FISCAL NOTE ON STATE AND LOCAL GOVERNMENT

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

2. What units, parts or division of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will impact the Finance and Administration Cabinet, Kentucky Higher Education Assistance Authority.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 164.744(1), KRS 164.748(2), (4), (10), and (20), 164.753(2), 20 U.S.C. 1071 through 1087(2), 1095a, 34 C.F.R. 682.410(b)(9) and (10).

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. The administrative regulation will result in no additional expenditures by or revenues to the Authority during the first full year of its effectiveness.

a. How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This regulation will not generate any revenue.

b. How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This regulation will not generate any revenue.

c. How much will it cost to administer this program for the first year? No costs are associated with this regulation.

d. How much will it cost to administer this program for subsequent years? No costs are associated with this regulation.

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

Revenues (+/-):
Expenditures (+/-):
Other Explanation:

FEDERAL MANDATE ANALYSIS COMPARISON

1. Cite the federal statute or regulation constituting the federal mandate. 20 U.S.C. 1095a, 34 C.F.R. 682.410(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 establishes the 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 five (5) days 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 that a decision, in accordance with the procedures prescribed in the administrative regulation, may be 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. Addi-

tionally, 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 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 how, if his income is above125% of 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 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 twenty (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 twenty (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 fifteen (15) percent 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 regulation 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.S. 1095a) and the applicable federal regulation (34 C F.R. 682.410(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 thirty (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 five (5) days 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 that the Authority may prescribe, to be rendered within sixty (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 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 fifteen (15) percent 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.

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 promulgating administrative body is permitted to select from within a range, 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 a hearing, the appointment of an impartial hearing officer, the 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 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 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.

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.

EDUCATION PROFESSIONAL STANDARDS BOARD (Amendment)

16 KAR 3:050. Professional certificate for instructional leadership - school principal, all grades.

RELATES TO: KRS 161.020, 161.027, 161.028, 161.030
STATUTORY AUTHORITY: KRS 161.027, 161.028, 161.030
NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.020 requires that a teacher or other professional school personnel hold a certificate of legal qualification for the respective position to be issued upon completion of a program of preparation prescribed by the Education Professional Standards Board. Additionally, KRS 161.027 specifically requires a preparation program for principals. A teacher education institution shall be approved for offering the preparation program corresponding to a particular certificate on the basis of standards and procedures established by the Education Professional Standards Board. This administrative regulation establishes the preparation and certification program for school principals, at all grade levels.

Section 1. Definitions. (1) "Level I" means the standards-based program of studies designed for minimal preparation to serve in the position of instructional leadership - school principal.

(2) "Level II" means the standards-based program of studies to attain the first five (5) year renewal of the certificate for the position of instructional leadership - school principal.

Section 2. Conditions and Prerequisites. (1) The provisional and professional certificate for instructional leadership - school principal shall be issued to an applicant who has completed an approved program of preparation and requirements, including assessments.

(2) The provisional and professional certificate for instructional leadership - school principal shall be valid for the position of school principal or school assistant principal for all grade levels.

(3) Prerequisites for admission to the program of preparation for the provisional and professional certificate for instructional leadership - school principal shall include:

(a) A master's degree;

(b) Three (3) years of documented teaching experience in a public school or a nonpublic school which meets the state performance standards as established in KRS 156.160;

(c) A written statement documenting the candidate's skills and understanding in the following areas:

1. Ability to improve student achievement;

2. Leadership; and

3. Advanced knowledge of curriculum, instruction, and assessment; and

(d) An agreement from a school district pledging support that includes opportunities for the candidate to participate in a high quality practicum experience. The agreement shall include:

1. A description of how the district will provide opportunities for the candidate;

a. To observe school and district leadership; and

b. To participate in school and district leadership activities;

2. Confirmation that the candidate shall be permitted to utilize aggregated school and district information and data; and

3. The signature of the district superintendent or the district superintendent's designee [~~Qualification for a Kentucky classroom teaching certificate;~~

~~(b) Successful completion of a generic test of communication skills, general knowledge, and professional education concepts approved by the Education Professional Standards Board as a condition for the issuance of a Kentucky classroom teaching certificate or other test authorized for this purpose by the appropriate state agency recognized by the Education Professional Standards Board through contract with the Interstate Agreement on Qualification of Educational Personnel, and~~

~~(c) Successful completion of the Kentucky Teacher Internship Program, as provided in 16 KAR 7:010, or two (2) years of successful teaching experience outside the state of Kentucky.~~]

Section 3. Kentucky Administrator Standards for Preparation and Certification. [~~(1)~~] The approved program of preparation for the provisional certificate for instructional leadership - school principal shall.

(1) Prepare a candidate for the position of school principal as specified in the standards included in:

(a) The "Educational Leadership Policy Standards: ISLLC 2008"; and

(b) The "Technology Standards for School Administrators"; and

(2) Document candidate performance using "Dispositions, Dimensions, and Functions for School Leaders".

[~~(a) Include a master's degree in education; and~~

~~(b) Be designed to:~~

~~1. Address recommendations of relevant professional organizations including:~~

~~a. The National Policy Board for Educational Administration;~~

~~b. The University Council for Educational Administration;~~

~~c. The National Council of Professors of Educational Administration;~~

~~d. The National Association of Secondary School Principals;~~

~~e. The Collaborative for Technology Standards for School Administrators, and~~

~~f. The American Association of School Administrators; and~~

~~2. Prepare a candidate for the position of School Principal as specified in the standards included in "Interstate School Leaders Licensure Consortium Standards for School Leaders" and "Technology Standards for School Administrators".~~

~~(2) The Interstate School Leaders Licensure Consortium Standards for School Leaders are as follows:~~

~~(a) School leader standard 1. A school administrator is an instructional leader who promotes the success of all students by facilitating the development, articulation implementation, and stewardship of a vision of learning that is shared and supported by the school community;~~

~~(b) School leader standard 2. A school administrator is an educational leader who promotes the success of all students by advocating, nurturing, and sustaining a school culture and instructional program conducive to student learning and staff professional growth;~~

~~(c) School leader standard 3. A school administrator is an educational leader who promotes the success of all students by ensuring management of the organization, operations, and resources for a safe, efficient, and effective learning environment;~~

~~(d) School leader standard 4. A school administrator is an educational leader who promotes the success of all students by collaborating with families and community members, responding to diverse community interests and needs, and mobilizing community resources;~~

~~(e) School leader standard 5. A school administrator is an educational leader who promotes the success of all students by acting with integrity, fairness, and in an ethical manner; and~~

~~(f) School leader standard 6. A school administrator is an educational leader who promotes the success of all students by understanding, responding to, and influencing the larger political, social, economic, legal, and cultural context.~~

~~(3) The Technology Standards for School Administrators are as follows:~~

~~(a) Technology standard 1. Leadership and vision. Educational~~

~~leaders inspire a shared vision for comprehensive integration of technology and foster an environment and culture conducive to the realization of that vision.~~

~~(b) Technology standard 2. Learning and teaching. Educational leaders ensure that curricular design, instructional strategies, and learning environments integrate appropriate technologies to maximize learning and teaching.~~

~~(c) Technology standard 3. Productivity and professional practice. Educational leaders apply technology to enhance their professional practice and to increase their own productivity and that of others.~~

~~(d) Technology standard 4. Support, management, and operations. Educational leaders ensure the integration of technology to support productive systems for learning and administration.~~

~~(e) Technology standard 5. Assessment and evaluation. Educational leaders use technology to plan and implement comprehensive systems of effective assessment and evaluation.~~

~~(f) Technology standard 6. Social, legal, and ethical issues. Educational leaders understand the social, legal, and ethical issues related to technology and model responsible decision making related to these issues.~~]

Section 4. Principal Preparation Programs. (1) All principal preparation programs approved or accredited by the Education Professional Standards Board prior to May 31, 2009 shall no longer be approved or accredited as of December 31, 2011.

(a) A principal preparation program approved by the Education Professional Standards Board prior to May 31, 2009 shall cease admitting new candidates after December 31, 2011.

(b) Candidates admitted to a principal preparation program approved by the Education Professional Standards Board prior to May 31, 2009 shall complete the program by January 31, 2014.

(c) An institution of higher learning with a principal preparation program approved by the Education Professional Standards Board prior to May 31, 2009 may submit a redesigned program for approval pursuant to the requirements of subsection (2) of this section beginning May 31, 2009.

(d) An institution's redesigned principal preparation program may become operational beginning January 1, 2010, if the institution:

1. Submits a redesigned principal preparation program for review pursuant to the requirements of subsection (2) of this section; and

2. Receives approval of the redesigned program by the Education Professional Standards Board pursuant to 16 KAR 5:010, Section 22.

(e) Institutions submitting a redesigned principal preparation program shall not be subject to any submission dates for program approval for principal preparation programs from May 31, 2009 until December 31, 2012.

(f)1. The Education Professional Standards Board shall appoint a Principal Preparation Program Redesign Review Committee to conduct reviews of redesigned principal preparation programs submitted for approval between May 31, 2009 and December 31, 2012.

2. Principal preparation programs submitted for approval between May 31, 2009 and December 31, 2012 shall:

a. Be reviewed by the Principal Preparation Program Redesign Review Committee; and

b. Not be reviewed by the Continuous Assessment Review Committee, Content Program Review Committee, or the Reading Committee prior to presentation to the Education Professional Standards Board pursuant to 16 KAR 5:010, Section 22(2).

3.a. After review of a principal preparation program, the Principal Preparation Program Redesign Review Committee shall issue one (1) of the following recommendations to the Educational Professional Standards Board:

i. Approval,

ii. Approval with conditions; or

iii. Denial of approval.

b. The Education Professional Standards Board shall consider recommendations from staff and the Principal Preparation Program Redesign Review Committee and shall issue a decision pursuant to 16 KAR 5:010, Section 22(4).

(2) Beginning May 31, 2009, in addition to the requirements established in 16 KAR 5:010, Section 22, the educator preparation unit shall prepare and submit to the Education Professional Standards Board for each principal preparation program for which the institution is seeking approval a concise description of the preparation program which shall provide the following documented information:

(a) Signed collaborative agreements with school districts that include the following:

1. Joint screening of principal candidates by both district and university;

2. Joint identification of potential program leaders and mentors;

3. District and university codesign and codelivery of courses; and

4. The manner in which the principal preparation program is based on the identified leadership needs of each district;

(b) The protocol for screening applicants that ensures the identification and admission of high quality candidates into the program;

(c) A matrix that illustrates the alignment between the standards and performance indicators identified in Section 3 of this administrative regulation and the program's curriculum and field experiences;

(d) A syllabus for each of the program's required courses identified in the documentation in subsection (c) of this section;

(e) The program's plan to collaborate with academic disciplines and programs outside of the field of education in order to supplement the candidate's knowledge and skills set;

(f) The program's plan to collaborate with each district in providing high quality field experiences that:

1. Enhance courses throughout the entire program;

2. Ensure that the candidate has a continuum of school-based experiences that range from observing, to participating, to leading; and

3. Expose the candidate to diverse student populations and school environments;

(g) The program's plan to use rigorous formative and summative evaluations of each candidate's:

1. Knowledge and skills to advocate, nurture, and sustain a school culture that promotes and supports high levels of learning for all students; and

2. Knowledge and skills to manage a school for efficiency, accountability, and safety; and

(h) The program's plan to require all candidates to conduct a capstone project and defend it to a panel of program faculty and practicing school administrators at the end of Level I preparation.

Section 5. Assessment Prerequisites for the Provisional Certificate for Instructional Leadership - School Principal. An applicant for certification as a school principal, including vocational principal, shall attain the specified minimum score on the assessments required by 16 KAR 6:030.

Section 6 [5.] Statement of Eligibility for Internship. (1) A statement of eligibility for internship for the provisional certificate for instructional leadership - school principal shall be issued for a five (5) year period to an applicant who:

(a) Has successfully completed an approved program of preparation;

(b) Has three (3) years of full-time teaching experience; and

(c) Has successfully completed the appropriate assessment requirements for the school principal certification or qualifies for a one (1) year period for[of] completion of assessments under KRS 161.027(6).

(2) Application shall be made on "Application for Kentucky Certification or Change in Salary Rank", Form TC-1, incorporated by reference in 16 KAR 2:010.

(3) A request for renewal of the Statement of Eligibility pursuant to KRS 161.027(7) shall be made on Form TC-2, incorporated by reference in 16 KAR 4:060.[~~Form TC-1.~~]

Section 7 [6.] (1) A professional certificate for instructional leadership - school principal, level I, shall be issued upon successful completion of the principal internship as provided in KRS

161.027 and 16 KAR 7:020.

(2) The renewal of the professional certificate for instructional leadership - school principal, level I, shall require a recommendation from the approved recommending authority regarding the successful completion of an approved level II program. The certificate shall be valid for five (5) years.

(3) [~~In addition to the requirements of KRS 161.027(9),~~] Each subsequent five (5) year renewal of the professional certificate for instructional leadership - school principal, level II, shall require[~~:~~

~~(a)~~] successful completion of two (2) years of experience as a school principal within the preceding five (5) years[~~; or~~]

(4)[~~(b)~~] If the applicant has not successfully completed the two (2) years of experience as required by subsection (3) of this section, pursuant to KRS 161.027(9), each subsequent five (5) year renewal of the professional certificate for instructional leadership-school principal, level II, shall require

(a)[~~1.~~] Completion of three (3) semester hours of additional graduate credit directly related to the position of school principal for each required year of experience the applicant has not completed; or

(b)[~~2.~~] Successful completion of forty-two (42) hours of approved training selected from programs approved by the Kentucky Effective Instructional Leadership Training Program provided in KRS 156.101.

Section 8 [~~7.~~] Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Dispositions, Dimensions, and Functions for School Leaders" adapted from the "Kentucky Cohesive Leadership System Continuum for Principal Preparation and Development" by the Education Professional Standards Board, May 2008;

(b) "Educational Leadership Policy Standards: ISLLC 2008" as adopted by the National Policy Board for Educational Administration, December 12, 2007; and[~~"Interstate School Leaders Licensure Consortium Standards for School Leaders, 1996, the Council of Chief State School Officers";~~

~~(b) "Form TC-1, rev. 10/02 "; and~~]

(c) "Technology Standards for School Administrators", 2001, Collaborative for Technology Standards for School Administrators.

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

[~~(3) This material may also be obtained from the Council of Chief State School Officers, Attn: Publications, One Massachusetts Avenue, NW, Suite 700, Washington, DC 20001-1431.~~]

DR. JAMES G. CIBULKA, Chairperson

APPROVED BY AGENCY: June 3, 2008

FILED WITH LRC: June 6, 2008 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 28, 2008 at 9 a.m. at the offices of the Education Professional Standards Board, 100 Airport Road, 3rd Floor, Conference Room A, 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 July 31, 2008. 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: Alicia A. Sneed, Director of Legal Services, Education Professional Standards Board, 100 Airport Road, Third Floor, Frankfort, Kentucky 40601, phone (502) 564-4606, fax (502) 564-7080.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Alicia A. Sneed, Director of Legal Services

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the preparation and certification program for school principals.

(b) The necessity of this administrative regulation: The administrative regulation is necessary to inform principal candidates of the minimum requirements to enter a Kentucky principal preparation program and to notify teacher educator institutions of the standards and procedures that shall be met in order to offer an approved principal preparation program in Kentucky.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 161.027 requires the Education Professional Standards Board to establish by administrative regulation the requirements for a preparation program in institution of higher education for all new applicants for principal certification and establish criteria for admission to the program.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation sets the standards and the review process for accreditation of principal preparation programs.

(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 changes the prerequisites for admission to a principal preparation program to a master's degree, three (3) years of documented teaching experience, a statement documenting the skills of the candidate, and a signed agreement from a school district pledging to offer the candidate practicum experience. The amendment adopts for use in Kentucky principal preparation programs the newly updated standards for school leadership developed by the Council of Chief State School Officers, the Collaborative for Technology Standards for School Administrators, and the Kentucky Department of Education. The amendment also establishes new requirements for principal preparation programs and sunsets all previously approved programs. Finally, the amendment establishes procedures for approving newly redesigned programs meeting the standards and requirements in the amendment beginning May 31, 2009.

(b) The necessity of the amendment to this administrative regulation. This amendment adopts more stringent standards for principal preparation programs to meet in order to ensure that principals have the necessary skill set to be successful.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 161.027 requires the Education Professional Standards Board to establish by administrative regulation the requirements for a preparation program in institution of higher education for all new applicants for principal certification and establish criteria for admission to the program.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation sets the standards and the review process for accreditation of principal preparation programs.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect the eleven (11) currently approved principal preparation programs in Kentucky, institutions of higher learning that might seek approval to offer principal preparation programs in the future, the 174 school districts in Kentucky, and principal preparation candidates.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Currently approved principal preparation programs will have to redesign their current programs and offer that program for approval in order to continue to have an approved program. Institutions of higher learning will have to ensure any new programs meet the standards required by the amendment. Principal candidates will have to meet more stringent standards for entry

into the programs. School districts will not have any new requirements.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): School districts will have no additional cost. Currently approved programs may incur a one time cost associated with redesigning their programs. Principal candidates should not incur any additional costs, although the amendment does require that a candidate obtain a master's degree.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Principal candidates shall receive more focused training in leadership and the skills necessary to be a successful school leader. School districts will benefit from better prepared school leaders and collaborative relationships with institutions of higher learning. Institutions of higher learning will benefit from offering an advanced program which involves the school districts.

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

(a) Initially: There will be additional cost to the Education Professional Standards Board in man-power hours and other associated costs during the transitional period. At this time the agency is unable to estimate that cost as it will depend on the number of programs submitted and the interval of time between submissions.

(b) On a continuing basis: There should be no additional cost after the currently approved programs have been sunsetted.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: General 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: An additional staff member may be required during the transitional period to efficiently guide the programs through the approval process.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No fees were directly or indirectly increased.

(9) TIERING: Is tiering applied? No, all institutions of higher learning shall be treated the same.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Education Professional Standards Board, local school districts, and state funded institutions of higher education.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 161.027, 161.028, and 161.030

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This regulation should not generate any revenue.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No revenue should be generated.

(c) How much will it cost to administer this program for the first year? The cost is not capable of being estimated at this time. There will be an increase in manpower hours; however, there should be no other start-up expenses.

(d) How much will it cost to administer this program for subsequent years? There should be no additional cost related to this program after the current principal preparation programs are sunsetted.

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

Revenues (+/-):
Expenditures (+/-):
Other Explanation:

EDUCATION PROFESSIONAL STANDARDS BOARD
(Amendment)

16 KAR 5:020. Standards for admission to educator preparation[~~teacher education~~].

RELATES TO: KRS 161.020, 161.028, 161.030
STATUTORY AUTHORITY: KRS 161.028, 161.030
NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.028 requires that an educator preparation[~~a teacher education~~] institution be approved for offering the preparation program corresponding to a particular certificate on the basis of standards and procedures established by the Education Professional Standards Board. KRS 161.030 requires that a certificate shall be issued to a person who has completed a program approved by the Education Professional Standards Board. This administrative regulation establishes the standards for admission to an educator preparation[~~a teacher education program~~].

Section 1. Selection and Admission to Educator Preparation[~~Teacher Education Programs~~]. (1) In addition to appropriate National Council for Accreditation of Teacher Education standards incorporated under 16 KAR 5:010, each educator preparation[~~teacher education~~] institution shall develop and publish a plan of selection and admission of [~~teacher~~] candidates for the educator preparation[~~teacher education~~] program, which shall include:

(a) Tests to measure general academic proficiency;

(b) An evaluation of the candidate's disposition for the education profession; and

(c) Affirmation that candidates are provided a review of the Professional Code of Ethics for Kentucky School Personnel established in 16 KAR 1:020, to ascertain awareness, knowledge, and commitment as required for state educator certification.[~~Review of the Professional Code of Ethics for Kentucky School Personnel established in 16 KAR 1:020, and~~

~~(d) A declaration signed by each teacher candidate affirming a commitment to upholding the code and acknowledging awareness of information required for state certification.~~]

(2) The educator preparation[~~teacher education~~] institution shall file the plan with the Education Professional Standards Board.

Section 2. Tests to Measure General Academic Proficiency. (1) The educator preparation[~~teacher education~~] institution shall determine whether each candidate[~~applicant~~] exhibits an acceptable level of competency in oral and written communication as an admission requirement.

(2) A candidate[~~student~~] who plans to apply for admission to an educator preparation[~~a teacher preparation~~] program shall provide to the teacher education institution official scores of tests to measure general academic proficiency. A person shall not be permitted to apply for admission to a preparation program leading to certification as an educator[~~a teacher~~] without first providing evidence of meeting the general academic proficiency requirement.

(3) The educator preparation [~~teacher education~~] institution shall select the means of evidence for meeting the general academic proficiency requirement, which may include a combination of:

(a) College admission exams;

(b) Praxis I exams administered by the Educational Testing Service;

(c) Other assessments; or

(d) Grade point average.

Section 3. (1) An educator preparation unit identified as "low performing" or "at risk of low performing" pursuant to 16 KAR 5.010 shall implement one (1) or more of the following assessment plans for candidate admission:

(a) Plan I. A minimum composite score of 21 on the American College Test (ACT);

(b) Plan II. Pre-Professional [~~The state minimum scores on the Communication Skills and General Knowledge portions of the Praxis tests reevaluated and approved by the Education Professional Standards Board;~~

~~(c) Plan III Preprofessional~~] Skills Test (PPST) results, the [a] minimum scores as listed below [~~either on the~~]:

1. [~~Written format:~~

~~a.~~] Reading 173;

2 [~~b.~~] Mathematics 173; and

3 [~~c.~~] Writing 172.[~~, or~~

~~2. Computer-based format:~~

~~a. Reading 320;~~

~~b. Mathematics 318, and~~

~~c. Writing 318;~~]

(c) Plan III [~~(d) Plan IV.~~] Graduate Record Examination (GRE) General Tests. Each educator preparation institution shall establish a minimum passing score on the GRE as a measurement of verbal reasoning, quantitive reasoning, and analytical writing skills for admission when the entry into the educator[~~teacher~~] preparation program is at the graduate level[~~. In addition, each institution shall administer or require a writing assessment and verify the minimum writing competency for each applicant~~]; or

(d) Plan IV.[~~(e) Plan V.~~] SAT [~~I~~], a minimum composite score of 1470[~~990 and writing assessment~~].

(2)(a) An educator preparation unit identified as "low performing" or "at risk of low performing" pursuant to 16 KAR 5:010 shall require a candidate to obtain a cumulative grade point average of 2.50 on a 4.0 scale for admission to an educator preparation program[~~teacher education~~].

(b) A candidate who does not meet the grade point average established in paragraph (a) of this subsection shall possess a grade point average of 3.0 on a 4.0 scale on the last sixty (60) hours of credit completed, including undergraduate and graduate coursework, for admission to an educator preparation program[~~teacher education~~].

Section 4. Annual Report. (1) Each educator preparation unit[~~teacher education institution~~] shall submit an electronic report annually to the Education Professional Standards Board, that includes program[~~including the following information:~~

~~(1) Demographic~~] data on candidates[~~students~~] admitted to educator preparation programs[~~teacher preparation;~~

~~(2) The scores of the admission tests for each applicant, including scores for an applicant denied admission; and~~

~~(3) The grade point average for each applicant, including the grade point average for an applicant denied admission~~].

DR. JAMES G. CIBULKA, Chairperson

APPROVED BY AGENCY: June 3, 2008

FILED WITH LRC: June 6, 2008 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 28, 2008 at 9 a.m. at the offices of the Education Professional Standards Board, 100 Airport Road, 3rd Floor, Conference Room A, 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 July 31, 2008. 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: Alicia A. Sneed, Director of Legal Services, Education Professional Standards Board, 100 Airport Road, Third Floor, Frankfort, Kentucky 40601, phone (502) 564-4606, fax (502) 564-7080.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Alicia Sneed

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the standards for admission to an educator preparation institution.

(b) The necessity of this administrative regulation: KRS 161.028 requires that a teacher education institution be approved for offering the preparation program corresponding to a particular certificate on the basis of standards and procedures established by the Education Professional Standards Board.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 161.030 requires that a certificate shall be issued to a person who has completed a program approved by the Education Professional Standards Board.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes the standards for admission to a teacher education program.

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

(a) How the amendment will change this existing administrative regulation: The amendment removes language pertaining to Communication Skills and General Knowledge portions of the Praxis tests since the tests are no longer offered by Educational Testing Service. The amendment also removes language regarding computer-based tests which are no longer offered by ETS. The amendment addresses the fact that the Graduate Record Exam includes a measurement of verbal reasoning, quantitative reasoning, and analytical writing skills, and that the educator preparation institutions will no longer have to administer or require an additional writing assessment. Finally, the amendment reflects the changes in the SAT by updating the terminology used and proposing scoring adjustments and deletion of unnecessary language.

(b) The necessity of the amendment to this administrative regulation: This amendment will align Kentucky standards with changes in the testing industry. The amendment is necessary to remove requirements which are no longer relevant to the current reporting requirements.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 161.028 authorizes the Education Professional Standards Board to approve educator preparation institutions. The amendment updates testing terminology and aligns the regulatory language with current policy, so that the Education Professional Standards Board can effectively make decisions regarding approval of programs.

(d) How the amendment will assist in the effective administration of the statutes: The amendment eliminates language which is no longer applicable and eliminates confusion regarding testing requirements which have substantially changed.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: 28 Educator Preparation Institutions, and prospective students at the institutions.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The 28 Educator Preparation Institutions will have to change their testing requirements. The other entities will not need to take any action.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There are no anticipated costs associated with the amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The educator preparation programs will benefit by not being required to administer additional writing assessments which have been made redundant by the writing assessments included in the SAT and GRE. Applicants to the programs will benefit by not being required to take additional

assessments.

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

(a) Initially: No additional agency funds allocated or necessary for implementation of regulation.

(b) On a continuing basis: No additional agency funds allocated or necessary for implementation of regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: General 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 or funding will be necessary to implement this administrative regulation.

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

(9) TIERING: Is tiering applied? No all educator preparation programs will be treated the same.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Public colleges and universities and the Education Professional Standards Board.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 161.028 and 161.030.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. There should be no cost associated with this amendment.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No revenue will generated.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No revenue will be generated for the educator preparation institutions or the Education Professional Standards Board.

(c) How much will it cost to administer this program for the first year? There are no estimated costs associated with this amendment.

(d) How much will it cost to administer this program for subsequent years? There are no estimated costs associated with this amendment.

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

Revenues (+/-):
Expenditures (+/-):
Other Explanation:

FINANCE AND ADMINISTRATIVE CABINET
Department of Revenue
(Amendment)

103 KAR 3:020. Sales and Telecommunications Forms manual.

RELATES TO: KRS 61.870-61.884, 131.020, 131.030, 131.041-131.081, 131.081, 131.110, 131.130, 131.130, 131.155, 131.170, 131.181, 131.183, 131.190, 131.190(1), 134.580, 136.600-136.660, 139 070, 139 095, 139.170, 139.185, 139.210, 139.230, 139 240, 139.250, 139.260, 139 270, 139.470, 139.480, 139.483, 139.495, 139.497, 139.515, 139.517, 139.5382, 139.550, 139.570, 139.590, 139.620(1), 139.770(2), 139 778, 144.132, 154.20-206, 154.45-090, 154.45-110, 160.613-160.617, 224.01-310, 247.920

STATUTORY AUTHORITY: KRS 131.130(3)

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

Section 1. Sales and Use Tax - Required Forms. (1) Revenue Form 51A101(a), "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 51A101(b), "Sales and Use Tax Permit Update", shall be issued by the Department of Revenue to update the Sales and Use Tax Permit with business name and address change information.

(3) Revenue Form 51A101(c), "Kentucky Streamlined Sales and Use Tax (SST) Filing Information Permit", shall be issued to Model 4 Streamlined Sales and Use Tax filers registered in Kentucky and shall be conspicuously displayed by the (SST) permit holder at the location for which the permit was issued.

(4) Revenue Form 51A101(d), "Sales and Use Tax Permit Update (SST)",shall be issued by the Department of Revenue to update the Kentucky Streamlined Sales and Use Tax (SST) Filing Information Permit with business name and address change information.

(5)[~~(2)~~] Revenue Form 51A102, "Kentucky Sales and Use Tax 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.

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

(7)[~~(4)~~] Revenue Form 51A103, "Kentucky Accelerated Sales and Use Tax 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.

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

(9)[~~(6)~~] 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.

(10)[~~(7)~~] Revenue Form 51A109, "Application for Energy Direct Pay Authorization (Sales 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.

(11)[~~(8)~~] 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.

(12)[~~(9)~~] 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.

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

(14)[~~(11)~~] Revenue Form 51A113, "Kentucky Consumer's Use Tax 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.

(15)[~~(12)~~] Revenue Form 51A113 (O)[~~0~~]Consumer's Use Tax Return", 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.

(16)[~~(13)~~] 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 selected sales and use tax forms and regulations.

(17) Revenue Form 51A116, "Use Tax Compliance Inquiry Worksheet", shall be completed by a purchaser of Watercraft, Aircraft, or other tangible property to document if the purchase of the property is subject to the Kentucky Use Tax

(18)[~~(14)~~] 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 utilized in the exempt entity's function

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

(20)[~~(16)~~] Revenue Form 51A127, "Out-of-State Purchase Exemption Certificate", shall be presented to a retailer by an out-of-state agency or institution that is qualified for exemption in their state of residence.

(21)[~~(17)~~] 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

(22)[~~(18)~~] 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 of sales and use tax paid based upon previous estimates of tax due.

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

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

(25) [~~(21)~~] 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.

(26)[~~(22)~~] Revenue Form 51A135, "Kentucky Sales Tax Motor Vehicle Sales Supplementary Schedule", shall be completed by motor vehicle dealers who collect Kentucky sales tax on the sale of motor vehicles to residents of states who subject Kentucky residents to sales upon the purchase of motor vehicles in their states.

(27)[~~(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 for the direct operation of watercraft in the activity of transporting property or in conveying persons for hire

(28)[~~(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.

(29)[~~(25)~~] Revenue Form 51A150, "Aircraft 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.~~]

(30) [~~(28)~~] Revenue Form 51A154, "Certificate of Exemption Out-of-State Delivery for Aircraft, All Terrain Vehicle (ATV), Mobile/Manufactured Homes, Campers, Boats, Motors or Trailers", shall be completed in triplicate by the seller and buyer when the sale of the tangible personal property occurs and the seller makes delivery of the tangible personal property out of state, and also completes 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.

(31)[~~(29)~~] 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.

(32)[~~(30)~~] 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, ratites, buffalo, aquatic organisms, or cervids to claim exemption from sales and use tax on the purchase of certain tangible personal property.

(33)[~~(31)~~] 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 construction, repair, or renovation of on-farm facilities exempt under the provisions of KRS 139.480.

(34)[~~(32)~~] Revenue Form 51A160, "Application for Truck Part Direct Pay Authorization", shall be filed with the Department of Revenue by the owner of a motor vehicle, including a towed unit, qualifying for the repair and replacement part exemption provided under KRS 139.480(32)(a) to apply for the truck part direct pay authorization.

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

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

(37)[~~(35)~~] Revenue Form 51A163, "Application for Charter Bus Part Direct Pay Authorization", shall be filed with the Department of Revenue by the owner of a charter bus qualifying for the repair and replacement part exemption provided under KRS 139.480(32)(b) to apply for a charter bus direct pay authorization.

(38)[~~(36)~~] Revenue Form 51A164, "Charter Bus Direct Pay Authorization", shall be issued by the Department of Revenue to authorize charter bus carriers to report and pay directly to the Department the sales and use tax on all purchases of repair and replacement parts for charter buses, and to authorize retailers to sell charter bus repair and replacement parts directly to the charter bus carriers without receipt of sales and use tax.

(39)[~~(37)~~] Revenue Form 51A165, "Kentucky Sales and Use Tax Charter Bus Direct Pay Authorization (CB DPA) Purchase Report", shall be filed annually by charter bus carriers using the charter bus direct pay authorization to report purchases of repair and replacement parts for carrier vehicles for the previous calendar year.

(40)[~~(38)~~] 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.

(41)[~~(39)~~] 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.

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

(43)[~~(41)~~] 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.

(44)[~~(42)~~] 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.

(45)[~~(43)~~] 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.

(46)[~~(44)~~] 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.

(47)[~~(45)~~] 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 the proceeds from the resale of the property is used solely for the benefit of the elementary or secondary schools or their students.

(48)[~~(46)~~] 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.

(49)[~~(47)~~] 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.

(50)[~~(48)~~] 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.

(51)[~~(49)~~] 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.

(52)[~~(50)~~] Revenue Form 51A250, "Application for Transient Merchant Permit", shall be completed by a transient merchant and filed with the clerk in the county in which the business is to be conducted, or if 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.

(53)[~~(51)~~] Revenue Form 51A260, "Streamlined Sales Tax Agreement–Certificate of Exemption", shall be presented to a seller by a purchaser to claim that tangible personal property purchased from the seller qualifies for exemption.

(54)[~~(52)~~] Revenue Form 51A270, "Certificate of Sales Tax Paid on the Purchase of a Motor Vehicle", shall be issued by motor vehicle dealers to a non-resident purchaser of a motor vehicle on which the Kentucky sales tax has been paid.

(55) Revenue Form 51A280, "Out-Of-State Purchase-Use Tax Affidavit", shall be submitted to County Clerks by taxpayers purchasing tangible personal property from out-of-state for title or first-time registration.

(56) Revenue Form 51A290, "Information Sharing and Assignment Agreement For Designated Refund Claims", shall be submitted by an approved company or agency and its vendors and contractors who agree to share documentation with the Department of Revenue for refund claim under the Kentucky Enterprise Initiative Act, Signature Project, or Alternative Fuel, Gasification or Renewable Energy Facility.

(57) Revenue Form 51A291, "Application For Kentucky Signature Project Sales and Use Tax Refund", shall be completed by an approved company or agency in the construction of an approved Signature Project submitted to the Department of Revenue annually during the (12) years the project grant agreement is in effect.

(58) Revenue Form 51A292, "Expenditure Report for Signature Project Refunds", shall be submitted by a refund applicant to document expenditures and taxes paid on property and materials used in the construction of an approved Signature Project.

(59)[~~(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 which in turn is presented to a retailer by the federal government unit to claim exemption from sales and use tax on purchases of tangible personal property to be used in the exempt governmental function.

(60)[~~(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 additional information concerning the exemption from sales and use tax.

(61) ~~(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).

(62) Revenue Form 51F010(a), "Utility Gross Receipts License Tax (UGRLT) Exemption Authorization", 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 utility gross receipts license tax and that they are required to report and pay directly to the Department of Revenue the utility gross receipts license tax on that portion of the purchase price

which is subject to tax. Revenue Form 51F010(b), "Energy Direct Pay - Utility Gross Receipts License Tax Exemption Authorization", 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 either the sales and use tax or the utility gross receipts license tax and that they are required to report and pay directly to the Department of Revenue the sales and use tax and the utility gross receipts license tax on that portion of the purchase price which is subject to tax.

Section 2. Telecommunications Provider Tax-Required Forms (1) Revenue Form 75A001, "Telecommunications Tax Receipts Certification Form", shall be used by city and county taxing jurisdictions to certify tax receipts for prior fiscal year if applicable.

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

(3) Revenue Form 75A002 (I), "Instructions for Telecommunications Provider Tax Return", shall be used by telecommunications providers as a guide in filing their telecommunications provider tax return.

(4) Revenue Form 75A005, "Telecommunications Tax Complaint Form", shall be submitted to the Department of Revenue by local taxing authorities who express disagreement with the distribution of telecommunications tax to their jurisdiction.

(5) Revenue Form 75A900, "Telecommunications Tax Application", shall be used by telecommunications providers to register with the Department of Revenue.

Section 3. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) Sales and use tax - referenced material:

1. Revenue Form 51A101(a), "Sales and Use Tax Permit", March 2007[~~September, 2004~~];

2. Revenue Form 51A101(b), "Sales and Use Tax Permit Update", March 2007;

3. Revenue Form 51A101(c), "Kentucky Streamlined Sales and Use Tax (SST) Filing Information Permit", March 2007;

4. Revenue Form 51A101(d), "Sales and Use Tax Permit Update (SST)", March 2007;

5.[~~2.~~] Revenue Form 51A102, "Kentucky Sales and Use Tax Worksheet", January[,] 2008 [~~2007~~];

6.[~~3.~~] Revenue Form 51A102E, "Kentucky Sales and Use Tax Worksheet - Electronic Funds Transfer", January[,] 2008 [~~2007~~];

7.[~~4.~~] Revenue Form 51A103, "Kentucky Accelerated Sales and Use Tax Worksheet", January [,] 2008 [~~2007~~];

8.[~~5.~~] Revenue Form 51A103E, "Kentucky Accelerated Sales and Use Tax Worksheet - Electronic Funds Transfer", January[,] 2008 [~~2007~~];

9. [~~6.~~] Revenue Form 51A105, "Resale Certificate", January[,] 2005;

10.[~~7.~~] Revenue Form 51A109, "Application for Energy Direct Pay Authorization (Sales and Use Tax and Utility Gross Receipts License Tax)", September[,] 2006;

11.[~~8.~~] Revenue Form 51A110, "Direct Pay Authorization", August [,] 1997;

12.[~~9.~~] Revenue Form 51A111, "Certificate of Exemption Machinery for New and Expanded Industry", January[,] 2007;

13.[~~10.~~] Revenue Form 51A112, "Application for Direct Pay Authorization", March[,] 2005;

14.[~~11.~~] Revenue Form 51A113, "Kentucky Consumer's Use Tax Worksheet", July[,] 2005;

15.[~~12.~~] Revenue Form 51A113(O9), "Consumer's Use Tax Return", August[,] 2005;

16.[~~13.~~] Revenue Form 51A115, "Order for Selected Sales and Use Tax Publications", April 2008; [~~, February, 2006~~];

17. Revenue Form 51A116, "Use Tax Compliance Inquiry Worksheet", March 2008;

18.[~~14.~~] Revenue Form 51A125, "Application for Purchase Exemption Sales and Use Tax", January 2008 [~~February, 1993~~];

19.[~~15.~~] Revenue Form 51A126, "Purchase Exemption Certificate", August[,] 2004;

20.[~~16.~~] Revenue Form 51A127, "Out-of-State Purchase Exemption Certificate", April 2007 [~~December, 2006~~];

21.[~~17.~~] Revenue Form 51A128, "Solid Waste Recycling Machinery Exemption Certificate", March[,] 2005;

22. [~~18.~~] Revenue Form 51A129, "Kentucky Sales and Use Tax Energy Exemption Annual Return", September[,] 2005;

23. [~~19.~~] Revenue Form 51A130, "Kentucky Sales and Use Tax Monthly Aviation Fuel Tax Credit Schedule of Qualified Certificated Air Carriers ", August[,] 2005;

24. [~~20.~~] Revenue Form 51A131, "Kentucky Sales and Use Tax Monthly Aviation Fuel Dealer Supplementary Schedule", August[,] 2005;

25.[~~21.~~] Revenue Form 51A132, "Kentucky Sales and Use Tax Equine Breeders Supplementary Schedule", June[,] 2005;

26.[~~22.~~] Revenue Form 51A135, "Kentucky Sales Tax Motor Vehicle Sales Supplementary Schedule", August[,]2006;

27.[~~23.~~] Revenue Form 51A143, "Purchase Exemption Certificate - Watercraft Industry", March[,] 2005;

28.[~~24.~~] Revenue Form 51A149, "Certificate of Exemption for Pollution Control Facilities", January[,] 2007;

29.[~~25.~~] Revenue Form 51A150, "Aircraft Exemption Certificate", January[,] 2005;

~~[26. Revenue Form 51A151, "Enterprise Zone Sales and Use Tax Exemption Certificate for Qualified Businesses Machinery and Equipment", January, 2007;~~

~~27. Revenue Form 51A152, "Enterprise Zone Sales and Use Tax Exemption Certificate for Building Materials", January, 2007,~~]

30.[~~28.~~] 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.[~~29.~~] Revenue Form 51A157, "Certificate of Exemption - Water Used in Raising Equine", July[,] 2005

32.[~~30.~~] Revenue Form 51A158, "Farm Exemption Certificate", January[,] 2007;

33.[~~31.~~] Revenue Form 51A159, "On-Farm Facilities Certificate of Exemption for Materials, Machinery and Equipment", December [~~January,~~] 2007;

34.[~~32.~~] Revenue Form 51A160, "Application for Truck Part Direct Pay Authorization", March[,] 2005;

35.[~~33.~~] Revenue Form 51A161, "Truck Part Direct Pay Authorization", December 2006 [~~October 2003~~];

36.[~~34.~~] Revenue Form 51A162, "Kentucky Sales and Use Tax Truck Part Direct Pay Authorization (TP DPA) Purchase Report", December, 2006 [~~October 2003~~];

37.[~~35.~~] Revenue Form 51A163, "Application for Charter Bus Part Direct Pay Authorization", June[,] 2005;

38.[~~36.~~] Revenue Form 51A164, "Charter Bus Direct Pay Authorization", August[,] 2006.

39.[~~37.~~] Revenue Form 51A165, "Kentucky Sales and Use Tax Charter Bus Direct Pay Authorization (CB DPA) Purchase Report", August[,] 2006.

40.[~~38.~~] Revenue Form 51A200, "Application or Kentucky Enterprise Initiative Act (KEIA) Tax Refund Program", March 2008 [~~July, 2005~~],

41.[~~39.~~] Revenue Form 51A205, "Kentucky Sales and Use Tax Instructions", July[,] 2005;

42.[~~40.~~] Revenue Form 51A209, "Sales and Use Tax Refund Application", May 2007 [~~March, 2005~~];

43.[~~41.~~] Revenue Form 51A216, "Application for Pollution Control Tax Exemption Certificate", March[,] 2005;

44.[~~42.~~] Revenue Form 51A222, "Certificate of Exemption for Alcohol Production Facilities", January[,] 2007;

45.[~~43.~~] Revenue Form 51A223, "Application for Alcohol Production Facility Tax Exemption Certificate", July[,] 1980;

46.[~~44.~~] Revenue Form 51A226, "Pollution Control Tax Exemption Certificate", March[,] 2005;

47.[~~45.~~] Revenue Form 51A227, "Certificate of Resale (Schools)", May 2007 [~~August, 1984~~];

48.[~~46.~~] Revenue Form 51A228, "Application for Fluidized Bed Combustion Technology Tax Exemption Certificate", May 2007 [~~January, 1987~~];

49.[~~47.~~] Revenue Form 51A229, "Fluidized Bed Combustion

Technology Tax Exemption Certificate", January[,] 2008 [1987];

50.[48.] Revenue Form 51A241, "Registration for the Kentucky Sales and Use Tax Refund for Motion Picture and Television Production Companies", May 2007 [February, 1987];

51.[49.] Revenue Form 51A242, "Application for Sales and Use Tax Refund for Motion Picture Production Company", May 2007 [January, 1987];

52.[50.] Revenue Form 51A250, "Application for Transient Merchant Permit", April, 2005;

53.[51.] Revenue Form 51A260, "Streamlined Sales Tax Agreement - Certificate of Exemption", August[,] 2006;

54.[52.] Revenue Form 51A270, "Certificate of Sales Tax Paid on the Purchase of a Motor Vehicle", August[,] 2006;

55. Revenue Form 51A280, "Out-Of-State Purchase-Use Tax Affidavit", July 2007;

56. Revenue Form 51A290, "Information Sharing and Assignment Agreement for Designated Refund Claims", October 2007;

57. Revenue Form 51A291, "Application for Kentucky Signature Project Sales and Use Tax Refund", October 2007;

58. Revenue Form 51A292, "Expenditure Report for Signature Project Refunds", October 2007;

59. [53.] Revenue Form 51F008, "Federal Government Exemption from Kentucky Sales and Use Tax Notification", January 2008 [December, 1998];

60. [54.] Revenue Form 51F009, "Purchase Exemption Notification", January 2008 [December, 1998];

61.[55.] Revenue Form 51F010, "Energy Direct Pay Authorization: Notification", January 2008 [December, 1998];

62. Revenue Form 51F010(a), "Utility Gross Receipts License Tax (UGRLT) Exemption Authorization", January 2008;

63. Revenue Form 51F010(b), "Energy Direct Pay - Utility Gross Receipts License Tax Exemption Authorization", January 2008;

(b) 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;

3. Revenue Form 75A002 (I), "Instructions for Telecommunications Provider Tax Return", July[,] 2006;

4. Revenue Form 75A005, "Telecommunications Tax Complaint Form", October[,] 2006;

5. Revenue Form 75A900, "Telecommunications Tax Application", December[,] 2005;

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Revenue, 501 High Street, [200 Fair Oaks Lane], Frankfort, Kentucky 40620, or at any Kentucky Department of Revenue Taxpayer Service Center, Monday through Friday, 8 a.m. to 5 p.m.

WILLIAM M. COX, SR., Commissioner

APPROVED BY AGENCY. May 21, 2008

FILED WITH LRC: May 22, 2008 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed new administrative regulation shall be held on July 23, 2008 at 10 a.m. in Room 386, Capitol Annex Building, 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, 2008. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person noted below.

CONTACT PERSON: Richard Dobson, Executive Director, Office of Sales and Excise Taxes, Department of Revenue, Finance and Administration Cabinet, 501 High Street, Frankfort, Kentucky 40601, phone (502) 564-5523, fax (502) 564-2906.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Richard Dobson, Executive Director

(1) Provide a brief summary of:

(a) What this administrative regulation does: KRS 131.130(3) authorizes the Department of Revenue to prescribe forms necessary for the administration of any revenue law by the promulgation of an administrative regulation incorporating the forms by reference. This administrative regulation incorporates by reference the required revenue forms used in the administration of Sales and Use Tax and Telecommunications Excise and Gross Revenues Tax by the Department of Revenue.

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

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 131.130(3) authorizes the Department of Revenue to prescribe forms necessary for the administration of any revenue law by the promulgation of an administrative regulation incorporating the forms by reference. This administrative regulation incorporates by reference the required revenue forms used in the administration of the Sales and Use Tax and the Telecommunications Excise and Gross Revenues Tax by the Department of Revenue.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation incorporates by reference the required revenue forms used in the administration of the Sales and Use Tax and Telecommunications Excise and Gross Revenues Tax by the Department of Revenue.

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

(a) How the amendment will change this existing administrative regulation: Not applicable.

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

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

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

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

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No actions will have to be taken by the taxpayers or local governments to comply with this administrative regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no anticipated cost incurred by the taxpayer or local government.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Taxpayers will be able to reference all sales and use and telecommunications excise and gross revenues tax forms in one location.

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

(a) Initially: The Department of Revenue will not incur additional costs as the result of this regulation.

(b) On a continuing basis: The Department of Revenue will not incur additional costs as the result of this regulation.

(6) What is the source of the funding to be used for the imple-

mentation and enforcement of this administrative regulation: Department of Revenue agency funds.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: This administrative regulation does not require an increase in fees or funding.

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

(9) TIERING: Is tiering applied? Tiering was not applied because the requirements of this regulation apply to every taxpayer.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

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

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 131.130(3)

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. No additional expenditures or revenue for the Commonwealth or local government agency.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will not generate revenue.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will not generate revenue.

(c) How much will it cost to administer this program for the first year? No additional cost.

(d) How much will it cost to administer this program for subsequent years? No additional cost.

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

Revenues (+/-):
Expenditures (+/-):
Other Explanation:

FINANCE AND ADMINISTRATION CABINET
Department of Revenue
Office of Sales and Excise Taxes
(Amendment)

103 KAR 3:050. Miscellaneous Taxes Forms manual.

RELATES TO: KRS 42.470, 61.870-61.884, 131.020, 131 030, 131.041-131.081, 131.081(2), (9), (15), 131.110, 131.130, 131.130(3), (10), 131.155, 131.170, 131.181, 131.183, 131.190, 131.190(1), 131.340, 131.500, 131.500(1), (2), (3), (10), 131.510(1), (2)(a), 131.540, 132.020, 132.043, 132.060-132.090, 132.130-132.180, 132.190, 132.200, 132.215, 132.216, 132.220-132.270, 132.290, 132.310, 132.320, 132.450, 132.487, 132.510, 132.820, 132.990, 133.045, 133.110, 133.120, 133.130, 133.240, 134.020, 134.390, 134.420, 134.430, 134.440, 134.500, 134.580(4), 134.590, 134.800, 134.805, 134.810, 134.815, 134.820, 134.825, 134.830, 135.010, 135.020, 135.050, 136.020, 136.030, 136.040, 136.050, 136.070, 136.071, 136.0704, 136.090, 136.100, 136.115-136 180, 136.181-136.187, 136.1873, 136.310, 136.320, 136.330, 136.335, 136.377, 136.392, 136.545, 136.575, 136 600-136 660, 137.130, 137.160, 138.165(2), 138.195, 138.210, 138.240, 138.250, 138 260, 138 270, 138.320, 138.341, 138.342, 138.344-138.355, 138.358, 138.450, 138.460, 138.464, 138.4605, 138.470(4), (5), (6), 138.502, 138.530, 138 870, 138.876, 138 880, 138.885, 140 010, 140.060, 140.080(1)(a), 140.100, 140.130, 140.160, 140.165, 140.190, 140.222, 140.300-140.360, 140.350, 142.010, 142.050, 142.321, 142.327, 142.357, 143.030(1), 143.037143.040, 143 050, 143.060(1), 143.085, 143.990, 143A.010, 143A.030, 143A.035, 143A.037, 143A.080, 143A.090, 143A.100(1), 143A.991, 144.120(4), 154.22-050, 154.22-060, 154 22-070, 154.23-010, 154.24-110, 154.24-130, 154.26-090, 154.28-090, 154.34-010, 154.45-090, 154 45-100, 154.45-110(1), 155.170, 160.613-160.617, 209.160, 224.01-310(1), 224.60, 234.321, 234 370, 243.710, 243.720, 243.730, 243.850, 243 884, 248.756(2), 299 530, 304.4-030, 304.11-050, 304.49-220, 351.175, 395 470(3), 413.120,

STATUTORY AUTHORITY: KRS 131.130(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 131.130(3) authorizes the Department of Revenue to prescribe forms necessary for the administration of any revenue law by the promulgation of an administrative regulation incorporating the forms by reference. This administrative regulation incorporates by reference the required Revenue Forms used in the administration of miscellaneous taxes by the Department of Revenue other than Income Taxes, Sales and Use Taxes, Telecommunications Excise and Gross Revenues Tax, Severance Taxes, and Property Taxes.

Section 1. 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 73A529, "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 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.

(7) 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.

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

(9) 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.

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

(11) 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.

(12) 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.

(13) 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.

(14) Revenue Form 73A628, "Distributors 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 malt beverage wholesale sales tax.

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

(2) Revenue Form 73A801(P), "2007[~~2006~~] Kentucky Bank Franchise Tax Forms and Instructions", shall be the packet 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.

(3) Revenue Form 73A801, "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 2007 [~~2006~~].

(4) Revenue Form 73A802, "Application for 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 3. Cigarette Tax - Required Forms. (1) Revenue Form 73A181, "Cigarette Licenses and Other Tobacco Product Account Number Application", shall be used by persons interested in acting as a cigarette wholesaler, subjobber, 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 Order Form", shall be used by licensed cigarette wholesalers or unclassified acquirers to order cigarette tax stamps.

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

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

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

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

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

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

(10) Revenue Form 73A423, "Monthly Report of Cigarette Papers", shall be used by vendors or wholesalers to file the tax owed on rolling papers sold.

(11) Revenue Form 73B401, "Cigarette Tax Credit Claim Wholesaler's Affidavit"[~~,~~]shall be signed by a licensed cigarette wholesaler attesting that the reported tax evidence did or did not have the twenty-seven (27) cents surtax paid on it.

Section 4. Health Care Provider Tax. (1) Revenue Form 73A060, "Health Care Provider Tax Return" shall be used by taxpayers to file the gross revenues and compute the tax for the health care provider tax.

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

(3) Revenue Form 73A061, "Kentucky Health Care Provider Application for Certificate of Registration" shall be completed by the taxpayer to register for the health care provider tax.

Section 5. Inheritance Tax - Required Forms. (1) Revenue Form 92A101, "Nonresident Inheritance and Estate Tax Forms 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 for dates of death on or after July 1995.

(2) Revenue Form 92A110, "Real Estate Data Report", shall be used by the personal representative or beneficiary of an estate on each piece of real estate to provide a description and valuation of said property for dates of death on July 1, 1995 through June 30, 1998.

(3) Revenue Form 92A120, "Resident Inheritance and Estate Tax Forms and Instructions", shall be used by the personal representative or beneficiary of a resident estate to establish the inheritance and estate tax due the Commonwealth for dates of death on or after July 1995.

(4)[~~(3)~~] Revenue Form 92A120-S, "Inheritance and Estate Tax Return - Short Form" shall be used by the personal representative or beneficiary of a resident estate to establish the appropriate inheritance and estate tax due the Commonwealth.

(5)[~~(4)~~] Revenue Form 92A120-X, "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.

(6)[~~(5)~~] Revenue Form 92A121, "Acceptance of Inheritance and Estate Tax Return", shall be sent by the inheritance and estate tax section to the personal representative or beneficiary of an estate to certify that all death taxes due the Commonwealth have been paid.

(7)[~~(6)~~] 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.

(8) Revenue Form 92A200PKT, "Kentucky Inheritance and Estate Tax Forms and Instructions", may be used by the personal representative or beneficiary of a resident or nonresident estate to establish the inheritance and estate tax due the Commonwealth for deaths occurring on or after July 1, 1998.

(9)[~~(7)~~] Revenue Form 92A201, "Kentucky Inheritance 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)[~~(8)~~] 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)[~~(9)~~] Revenue Form 92A204, "Real Estate Valuation Information Form", 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)[~~(10)~~] 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)[~~(11)~~] Revenue Form 92A928, "Election to Defer the Payment of Inheritance Tax through Installments", shall be used by the beneficiary or beneficiaries of an estate to defer the payment of inheritance tax through installments.

(14)[~~(12)~~] 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.

(15)[~~(13)~~] Revenue Form 92A930, "Certificate of Release of Agricultural and Horticultural Inheritance Tax Lien", shall be used by the inheritance and estate tax section to request the county clerk to release the five (5) year lien that guaranteed collection of tax if the terms of the agreement are not met or if the five (5) years have [~~has~~] expired.

(16)[~~(14)~~] 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 or if the five (5) years have [~~has~~] expired

(17)[~~(15)~~] Revenue Form 92A932, "Receipt of Inheritance and Estate Taxes", shall be given to the taxpayer when tax payment is received in the office.

(18)[~~(16)~~] Revenue Form 92A936, "Election to Qualify Terminable Interest Property and/or Power of Appointment Property", shall be used by a personal representative or beneficiary to elect to qualify terminable interest property or power of appointment property if proper criteria exists.

(19)[~~(17)~~] Revenue Form 92F001, "Blanket Lien Release", shall be used to access lock boxes without requiring written consent or presence of the Department of Revenue or local PVA official and provides a blanket lien release on all property owned by any decedent.

(20)[~~(18)~~] 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 6. Insurance Tax - Required Forms. (1) Revenue Form 74A100, "Insurance Premiums Tax Return", shall be used by domestic and foreign life insurance companies, stock insurance companies other than life, and foreign mutual companies other than life to report liability for domestic and foreign life insurance tax, other than life insurance tax, fire insurance tax and retaliatory taxes and fees.

(2) Revenue Form 74A101, "Insurance Premiums Tax Return - Domestic Mutual, Domestic Mutual Fire, or Cooperative and Assessment Fire Insurance Companies", shall be used by domestic mutual, domestic mutual fire or cooperative and assessment fire insurance companies to report liability for premiums tax on amounts paid to authorized and unauthorized reinsurance companies.

(3) Revenue Form 74A105, "Unauthorized Insurance Tax Return", shall be used by insurers not authorized to conduct business in the Commonwealth of Kentucky by the Office 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, "Kentucky Estimated Insurance Premiums Tax for Calendar Year 2007", 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 an insurance premium surcharge.

Section 7. Legal Process - Required Forms. (1) 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.

(2) Revenue Form 73A201, "Quarterly Report of Affordable Housing Trust Fund Fee", shall be used by the county clerks to report the county's liability for the affordable housing trust fund fee.

Section 8. Marijuana and Controlled Substance - Required Forms. (1) Revenue Form 73A701, "Instructions for Affixing Marijuana and Controlled Substance Tax Evidence (Stamp)", shall be used by the Kentucky Department of Revenue to provide persons ordering marijuana and controlled substance tax stamps with the appropriate instructions on affixing the stamps.

(2) Revenue Form 73A702, "Notice of Tax Lien KRS 138 870 Marijuana and Controlled Substance Tax", shall be used by law enforcement officials to notify the Kentucky Department of Revenue and county clerks of the seizure of marijuana and other controlled substances.

(3) Revenue Form 73A703, "Marijuana or Controlled Substance Stamp Order Form", shall be used by taxpayers to order stamps for marijuana or controlled substances.

Section 9. 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 owner to apply for approval to sell watercraft refund motor fuels. [~~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 138.344 to 138.355.

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

(6) Revenue Form 72A052, "Kentucky Motor Fuels Tax Refund Permit", shall be used by the Department of Revenue 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 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.

(9) 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.

(10) 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.

(11) 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

(12) Revenue Form 72A072, "Application for Motor Fuel Re-

fund - 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.

(13) 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.

(14) [~~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.~~

~~(15) Revenue Form 72A077, "Licensed Gasoline Dealer's Monthly Report of Gasoline Sales to U.S. Government", shall be used by licensed gasoline dealers to report gasoline sales to U.S. government on their monthly reports.~~

~~(16)~~] 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.[~~(17) 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.~~

~~(18) 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.~~

~~(19) Revenue Form 72A081-P, "Purchaser's Report Gasoline Imported into Kentucky("Kentucky Tax Paid to Supplier"), shall be used by licensed gasoline dealers to report gasoline imported into Kentucky if the Kentucky tax was paid to the supplier, on the gasoline dealer's monthly report.~~

~~(20) Revenue Form 72A081-S, "Supplier's Report Gasoline Imported into Kentucky (Kentucky Tax Paid by Supplier", shall be used by licensed gasoline dealers to report gasoline imported into Kentucky if the Kentucky tax was paid by the supplier, on the gasoline dealer's monthly report.~~

~~(21) 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~~

~~(22)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.~~

~~(23) 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.~~

~~(24) 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.~~

~~(25) 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.~~

~~(26) 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.~~

~~(27) 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.~~]

(15) [~~(28)~~] Revenue Form 72A089, "Licensed Gasoline Dealer's Monthly Report", shall be used by licensed gasoline dealers to report and remit monthly gasoline tax.

[~~(29) Revenue Form 72A090, "Gasoline Dealer's Monthly Terminal Storage Report", shall be used by licensed gasoline dealers to report monthly terminal storage activity, on the gasoline dealer's monthly report.~~

~~(30) 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.~~]

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

(17) Revenue Form 72A099, "Transporter's Report", shall be used by licensed transporters to report monthly motor fuel deliveries.[~~(32) 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.~~

~~(33) Revenue Form 72A107, "Licensed Special Fuels Dealer's Monthly Report of Special Fuels Sales to U.S. Government", shall be used by licensed special fuels dealers to report special fuels sales to U.S. government, on the special fuels dealer's monthly report.~~]

(18) [~~(34)~~] Revenue Form 72A110, "Certification of Motor Fuels Nonhighway Use", shall be used by qualifying entities to certify the nonhighway use of special fuels. The certification shall be maintained by the licensed special fuels dealer [~~(35) Revenue Form 72A124, "Report of Kerosene and Other Receipts Received and Blended", shall be used by licensed special fuels dealers to report kerosene received and blended, on the licensed special fuels dealer's monthly report.~~

~~(36) Revenue Form 72A127, "Special Fuels Dealer's Schedule of Sales Qualifying for State or Local Government Agency Credit", shall be used by a licensed special fuels dealer to list sales of special fuels to state or local government agencies for nonhighway special fuels use for a specific monthly period.~~

~~(37) Revenue Form 72A128, "Special Fuels Dealer's Schedule of Sales Qualifying for Nonprofit Religious, Chantable or Educational Organization Credit", shall be used by a licensed special fuels dealer to list sales of special fuels to nonprofit religious, charitable or education organizations for nonhighway special fuels use for a specific monthly period.~~

~~(38) Revenue Form 72A129, "Special Fuels Schedule of Sales Qualifying for Commercial Off-Road Use Tax Credit", shall be used by licensed special fuels dealers to report special fuels sold for commercial off-road use to holders of Kentucky motor fuels tax refund permits who issued to the dealer a Certification of Motor Fuels Nonhighway Use, Form 72A110.~~

~~(39) Revenue Form 72A131, "Special Fuels Schedule of Sales Qualifying for Agricultural Tax Credit", shall be used by a licensed special fuels dealer to list sales of special fuels to motor fuels tax refund permit holders for agricultural special fuels use for a specific monthly period.~~

~~(40) Revenue Form 72A132, "Special Fuels Schedule of Sales Qualifying for Residential Heating Tax Credit", shall be used by a licensed special fuels dealer to list sales of special fuels to consumers for heating a personal residence for a specific monthly period.~~]

(19) [~~(41)~~] Revenue Form 72A135, "Application for Kentucky Motor Fuels Tax Refund Permit", shall be used by a person desiring to qualify for a refund of motor fuel excise tax paid for nonhighway use.

(20) [~~(42)~~] Revenue Form 72A138, "Licensed Special Fuels Dealer's Monthly Report", shall be used by a licensed special fuels dealer to report the total special fuels gallons received and distributed for a specific monthly period

[~~(43) Revenue Form 72A153, "Report of Special Fuels Received from Licensed Kentucky Dealers", shall be used by a licensed special fuels dealer to list every special fuels shipment enginating in Kentucky from another licensed special fuels dealer for a specific monthly period.~~

~~(44) Revenue Form 72A154, "Report of Special Fuels Imported from Other States", shall be used by a licensed special fuels dealer to list every special fuels shipment imported into Kentucky from other state sources on which the Kentucky special fuels excise tax was not precollected by the supplier for a specific monthly period.~~

~~(45) Revenue Form 72A154-P, "Purchaser's Report Special Fuels Imported (Kentucky Tax Paid to Supplier)", shall be used by a licensed special fuels dealer to list every special fuels shipment imported into Kentucky from other state terminals on which the Kentucky special fuels excise tax was paid to the supplier for a~~

~~specific monthly period.~~

~~(46) Revenue Form 72A154-S, "Supplier's Report Special Fuels Imported (Kentucky Tax Paid by Supplier)", shall be used by a licensed special fuels dealer to list every special fuels shipment imported into Kentucky from other state terminals on which the Kentucky special fuels excise tax was charged to the dealer's customer for a specific monthly period.~~

~~(47) Revenue Form 72A155, "Report of Special Fuels Exported or Sold for Export", shall be used by a licensed special fuels dealer to list of every shipment exported to another state for a specific monthly period.~~

~~(48) Revenue Form 72A156, "Report of Special Fuels Sold to Licensed Kentucky Dealers", shall be used by a licensed special fuels dealer to report all special fuels shipments sold to other licensed special fuels dealers for a specific monthly period.~~

~~(49) Revenue Form 72A159, "Report of Special Fuels Sold for Exclusive Use by Railroad Companies for Nonhighway Purposes", shall be used by a licensed special fuels dealer to report all special fuels shipments sold to a valid Motor Fuels Tax Refund Permit holder for exclusive use by railroad companies for nonhighway purposes for a specific monthly period.~~

~~(50) Revenue Form 72A160, "Licensed Special Fuels Dealer's Estimated Tax Payment", shall be used by a licensed special fuels dealer to report the special fuels tax liability for a specific monthly period and calculate ninety five (95) percent of the applicable tax due for remittance by the due date.]~~

(21)[~~(51)~~] Revenue Form 72A161, "Monthly Report Liquefied Petroleum Gas Dealer", shall be used by a licensed liquefied petroleum gas dealer to report all gallons of liquefied petroleum gas dispensed into the fuel tanks of licensed motor vehicles for a specific monthly period. [~~(52) Revenue Form 72A162, "Report of Liquefied Petroleum Gas Motor Fuels", shall be used by a licensed liquefied petroleum gas dealer to list every shipment of liquefied petroleum gas placed into the fuel tank of a licensed motor vehicle for a specific monthly period.~~]

(22)[~~(53)~~] Revenue Form 72A170, "Monthly Terminal Report", shall be used by a licensed motor fuels dealers to summarize all Kentucky terminal receipt and disbursement activity for a specific monthly period.

(23) Revenue Form 72A178, "Distributor's Schedule of Disbursements" shall be used by motor fuels dealers to report all disbursements for a specific monthly period.

(24) Revenue Form 72A179, "Distributor's Schedule of Receipts" shall be used by gasoline and special fuels dealers to report all receipts for a specific monthly period.

(25) Revenue Form 72A180, "Terminal Operator Schedule of Receipts" shall be used by gasoline and special fuels terminal operators to report all receipts for a specific monthly period.

(26) Revenue Form 72A181, "Terminal Operator Schedule of Disbursements" shall be used by gasoline and special fuels terminal operators to report all disbursements for a specific monthly period.

[~~(54) Revenue Form 72A171, "Report of Special Fuels Imported", shall be used by a licensed special fuels dealer to list all shipments imported into Kentucky from other states and placed into Kentucky terminal storage for a specific monthly period.~~

~~(55) Revenue Form 72A172, "Report of Special Fuels Received from Terminal or Refinery", shall be used by a licensed special fuels dealer to list all shipments received from other Kentucky terminals and placed into Kentucky terminal storage for a specific monthly period.~~

~~(56) Revenue Form 72A173, "Report of Special Fuels Withdrawals to Licensed Kentucky Dealers", shall be used by a licensed special fuels dealer to list all shipments withdrawn to other licensed special fuels dealers for a specific monthly period.~~

~~(57) Revenue Form 72A174, "Report of Special Fuels Withdrawals Exported or Sold for Export", shall be used by a licensed special fuels dealer to provide a list of every shipment withdrawn from terminal storage and exported to another state for a specific monthly period.~~

~~(58) Revenue Form 72A175, "Report of Special Fuels Withdrawals from Terminal Storage", shall be used by a licensed special fuels dealer to provide total gallon withdrawals from his terminal storage facility or facilities for a specific monthly period.~~]

(23) Revenue Form 72A178, "Distributor's Schedule of Disbursements" shall be used by motor fuels dealers to report all disbursements for a specific monthly period.

(24) Revenue Form 72A179, "Distributor's Schedule of Receipts" shall be used by gasoline and special fuels dealers to report all receipts for a specific monthly period.

(25) Revenue Form 72A180, "Terminal Operator Schedule of Receipts" shall be used by gasoline and special fuels terminal operators to report all receipts for a specific monthly period.

(26) Revenue Form 72A181, "Terminal Operator Schedule of Disbursements" shall be used by gasoline and special fuels terminal operators to report all disbursements for a specific monthly period.

[~~(59) Revenue Form 72A200, "Special Fuels Dealer's Schedule of Dyed Diesel Credits and Tax Due", shall be used by licensed special fuels dealers to report the total dyed diesel gallons received and distributed for a specific monthly period.~~

~~(60) Revenue Form 72A210, "Report of Dyed Diesel Received from Licensed Kentucky Dealers", shall be used by licensed special fuels dealer to list every dyed diesel shipment originating in Kentucky from another licensed special fuels dealer for a specific monthly period.~~

~~(61) Revenue Form 72A211, "Report of Dyed Diesel Imported from Other States", shall be used by licensed special fuels dealer to list all dyed diesel shipments imported into Kentucky from other states and placed into Kentucky terminal storage for a specific monthly period.~~

~~(62) Revenue Form 72A215, "Report of Kerosene and Other Receipts Received and/or Blended with Dyed Diesel", shall be used by licensed special fuels dealers to report kerosene and any other receipts received or blended with dyed diesel.~~

~~(63) 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.~~

~~(64) Revenue Form 72A221, "Report of Dyed Diesel Imported", shall be used by licensed special fuels dealers to list all dyed diesel shipments imported into Kentucky from other states and placed into Kentucky terminal storage for a specific monthly period.~~

~~(65) 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.~~

~~(66) 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.~~

~~(67) 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 other exported or sold for export from terminal storage.~~

~~(68) 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.~~

~~(69) 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.~~

~~(70) 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.~~

~~(71) 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.~~

~~(72) 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.~~

~~(73) Revenue Form 72A234, "Licensed Special Fuels Dealer's~~

~~Monthly Report of Dyed Diesel Sales to U.S. Government", shall be used by licensed special fuels dealers to report dyed diesel sold to the U.S. government.~~

~~(74) Revenue Form 72A240, "Special Fuels Dealer's Schedule of Dyed Diesel Sales Qualifying for Nonhighway Use Tax Credit", shall be used by licensed special fuels dealers to report dyed diesel sold for nonhighway use.~~]

(27)[~~(75)~~] 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, motor fuel transporter's, or terminal owner-operator's license.

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

(29)[~~(77)~~] 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.

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

(31) Revenue Form 72A304, "Motor Fuel Tax Electronic Filing Application", shall be used by motor fuels dealers to choose an electronic filing method.

Section 10. Motor Vehicle Usage Tax - Required Forms. (1) Revenue Form 71A010, "Motor Vehicle Usage Tax - Vehicle Condition Refund Application", shall be used by a taxpayer to apply for a refund of motor vehicle usage tax paid under KRS 138.150(16) based on the condition of the vehicle.

(2) 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.

(3) Revenue Form 71A101, "Motor Vehicle Usage Tax Multipurpose Form", shall be presented to the county clerk by a vehicle owner to:

(a) Claim one (1) of several exemptions;

(b) Establish "retail price" if prescribed by the department; or

(c) Establish "retail price" of new vehicles with equipment or adaptive devices added to facilitate or accommodate handicapped persons.

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

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

(6) Revenue Form 71A174, "County Clerk's Adjusted 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.

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

(8) Revenue Form 71F004, "Motor Vehicle Usage Tax - Loaner-Rental Program", shall be used by motor vehicle dealers for instructions on how to register for the Loaner-Rental Program and file monthly reports.

(9) Revenue Form 72A007, "Affidavit of Nonhighway Use", shall be used by taxpayers attesting that a motor vehicle will not be operated upon Kentucky's public highways.

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

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

(12) 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 11. Racing Taxes - Required Form. Revenue Form 73A100, "Race Track Pari-Mutuel and Admissions Report", shall be used by race tracks licensed by the Kentucky Horse Racing Authority to report liability for the pari-mutuel tax and to report admissions to the race track.

Section 12. Transient Room Tax - Required Form[s]. Revenue Form 73A850, "Transient Room Tax Monthly Return", shall be used by all persons, companies, corporations, groups or organizations doing business as motor courts, motels, hotels, inns, tourist camps, or like or similar accommodations businesses (excluding campgrounds) to report the taxable rent amount and transient room tax liability.

Section 13. Utility Gross Receipts License Tax - Required Forms. (1) Revenue Form 73A900, "Utility Gross Receipts License Tax Application", shall be used by utility service providers, consumers, and Energy Direct Pay (EDP) account holders to apply for a utility gross receipts license tax account number.

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

(3) Revenue Form 73A901(I), "Instructions for Utility Gross Receipts License Tax Return", shall be used by UGRLT[~~UGRL~~] account number holders to complete the Utility Gross Receipts License Tax Return.

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

(5) Revenue Form 73A902-V, "Kentucky Utility Gross Receipts License Tax Payment Voucher", shall be used by UGRLT[~~UGRL~~] account number holders to remit payment of the utility gross receipts license tax.

(6) Revenue Form 73F010, "Utility Gross Receipts License Tax", shall be used by utility providers, Energy Direct Pay (EDP) holders, and consumers for instruction on how to register and file monthly reports.

Section 14. Waste Tire Tax - Required Form. Revenue Form 73A051, "Motor Vehicle Tire Fee Report"[,]shall be used by businesses making retail sales of new motor vehicle tires to report liability for motor vehicle tire fees and to report the number of waste tires received from customers.

Section 15. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) Alcoholic beverage tax - referenced material:

1. Revenue Form 73A504, "Acknowledgment of Tax Liability on Imported Alcoholic Beverages", November[,] 2006;

2. Revenue Form 73A525, "Monthly Report of Distillers, Rectifiers or Bottlers", November[,] 2007; [~~2006,~~]

3. Revenue Form 73A526, "Wholesaler's Monthly Distilled Spirits Tax Report", January 2007; [~~November, 2006;~~]

4. Revenue Form 73A527, "Wholesaler's List of Individual Spirits Shipments Acquired", November[,] 2006;

5. Revenue Form 73A529, "Consignor's Report of Alcoholic Beverages Shipped", January 2007; [~~November, 2006,~~]

6. Revenue Form 73A530, "Consignor's Report of Alcoholic Beverages Shipped"[,]November[,] 2006;

7. Revenue Form 73A531, "Transporter's Report of Alcoholic Beverages Delivered", January 2007; [~~November, 2006,~~]

8. Revenue Form 73A535, "Report of Destruction of Alcoholic Beverages", December[,] 2006;

9. Revenue Form 73A575, "Wholesaler's Monthly Wine Tax Report", January 2007; [~~November, 2006;~~]

10. Revenue Form 73A576, "Vintner's Wine Report", April 2007; [November, 2006;]

11. Revenue Form 73A577, "Wholesaler's List of Individual Wine Shipments Acquired", November[,] 2006;

12. Revenue Form 73A626, "Brewer's Monthly Report Schedule", November[,] 2006,

13. Revenue Form 73A627, "Beer Distributor's Monthly Report", December[,] 2006;

14. Revenue Form 73A628, "Distributor's Monthly Malt Beverage Excise Tax and Wholesale Sales Tax Report", November[,] 2006; and

15. Revenue Form 73A629, "Beer Distributor's Sales to Federal Agencies", November[,] 2006;

(b) Bank franchise tax - referenced material:

1. Revenue Form 73A800, "Kentucky Registration Application for Bank Franchise Tax", January[,] 2008; [2007;]

2. Revenue Form 73A801(P), "2006 Kentucky Bank Franchise Tax Forms and Instructions", January[,] 2008; [2007,]

3. Revenue Form 73A801, "Bank Franchise Tax Return", January[,] 2008; [2007;]

4. Revenue Form 73A802, "Application for 90-Day Extension of Time to File Kentucky Bank Franchise Tax Return", January[,] 2008; [2007;]

(c) Cigarettes tax - referenced material:

1. Revenue Form 73A181, "Cigarette Licenses and Other Tobacco Product Account Number Application", December[,] 2006;

2. Revenue Form 73A190, "Cigarette License", December 2006; [April, 1988,]

3. Revenue Form 73A404, "Cigarette Tax Stamps Order Form", November[,] 2005;

4. Revenue Form 73A406, "Cigarette Tax Credit Certificate", May[,] 2005;

5. Revenue Form 73A409, "Cigarette Evidence/Property Receipt", November[,] 2003;

6. Revenue Form 73A420, "Monthly Report of Cigarette Wholesaler", August[,] 2006;

7. Revenue Form 73A420(I), "Instructions for Monthly Report of Cigarette Wholesaler"[,]June[,] 2002;

8. Revenue Form 73A421, "Cigarette Inventory Floor Tax", May[,] 2005;

9. Revenue Form 73A422, "Monthly Report of Other Tobacco Products and Snuff", June[,] 2006;

10. Revenue Form 73A423, "Monthly Report of Cigarette Papers", June[,] 2006; and

11. Revenue Form 73B401, "Cigarette Tax Credit Claim Wholesaler's Affidavit", November[,] 2006;

(d) Health care provider tax - referenced material:

1. Revenue Form 73A060, "Health Care Provider Tax Return", July[,] 2005;

2. Revenue Form 73A060(I), "Instructions - Kentucky Health Care Provider Tax Return", July[,] 2005; and

3. Revenue Form 73A061, "Kentucky Health Care Provider Application for Certificate of Registration", December[,] 2006,

(e) Inheritance tax - referenced material:

1. Revenue Form 92A101, "Kentucky Nonresident Inheritance and Estate Tax Return", May 1995;

2. Revenue Form 92A110, "Real Estate Data Report" May 1995;

3.[2.] Revenue Form 92A120, "Kentucky Resident Inheritance and Estate Tax Return", May 1995;

4.[3.] Revenue Form 92A120-S, "Inheritance and Estate Tax Return-Short Form", May[,] 1995;

5.[4.] Revenue Form 92A120-X, "Kentucky Spousal Inheritance Tax Return", October[,] 1992;

6.[5.] Revenue Form 92A121, "Acceptance of Inheritance and Estate Tax Return", March 2008; [March, 1986;]

7.[6.] Revenue Form 92A200, "Kentucky Inheritance and Estate Tax Return", July[,] 2003;

8. Revenue Form 92A200PKT, "Kentucky Inheritance and Estate Tax Forms and Instructions" August 2005;

9. [7.] Revenue Form 92A201, "Kentucky Inheritance Tax Return No Tax Due", July[,] 2003;

10. [8.] Revenue Form 92A202, "Kentucky Estate Tax Return", July[,] 2003;

11. [9.] Revenue Form 92A204, "Real Estate Valuation Information Form", July[,] 2003;

12. [10.] Revenue Form 92A205, "Kentucky Inheritance Tax Return (Simplified Format)", July[,] 2003;

13 [11.] Revenue Form 92A928, "Election to Defer the Payment of Inheritance Tax Through Installments", July[,] 2003;

14 [12.] Revenue Form 92A929, "Notice of Agricultural and Horticultural Inheritance Tax Lien", March[,] 1991;

15 [13.] Revenue Form 92A930, "Certificate of Release of Agricultural and Horticultural Inheritance Tax Lien", March[,] 1990;

16 [14.] Revenue Form 92A931, "Certificate of Partial Discharge of the Agricultural and Horticultural Inheritance Tax Lien", July[,] 1983;

17 [15.] Revenue Form 92A932, "Receipt of Inheritance and Estate Taxes", March 2008; [December, 1984;]

18 [16.] Revenue Form 92A936, "Election to Qualify Terminable Interest Property and/or Power of Appointment Property", May[,] 1995;

19 [17.] Revenue Form 92F001, "Blanket Lien Release", March 2008; [July, 2003;] and

20 [18.] Revenue Form 92F101, "A Guide to Kentucky Inheritance and Estate Taxes", March 2003;

(f) Insurance tax - referenced material:

1. Revenue Form 74A100, "Insurance Premiums Tax Return", November[,] 2007; [2005,]

2. Revenue Form 74A101, "Insurance Premiums Tax Return - Domestic Mutual, Domestic Mutual Fire, or Cooperative and Assessment Fire Insurance Companies", January 2008; [December, 2003,]

3. Revenue Form 74A105, "Unauthorized Insurance Tax Return", January 2008; [July, 2000,]

4. Revenue Form 74A106, "Insurance Premiums Tax Return - Captive Insurers", January 2008; [December, 2004;]

5. Revenue Form 74A110, "Kentucky Estimated Insurance Premiums Tax for Calendar year 2007", November[,] 2007; [2006,]

6. Revenue Form 74A116, "Tax Election for Domestic Life Insurance Companies", December[,] 1998;

7. Revenue Form 74A117, "Monthly Insurance Surcharge Report - Domestic Mutual, Cooperative and Assessment Fire Insurer", January 2008; [July, 2000,] and

8. Revenue Form 74A118, "Monthly Insurance Surcharge Report", January 2008, [July, 2000;]

(g) Legal process - referenced material:

1. Revenue Form 73A200, "County Clerk's Monthly Report of Legal Process Tax Receipts", November[,] 2006; and

2. Revenue Form 73A201, "Quarterly Report of Affordable Housing Trust Fund Fee", June[,] 2006;

(h) Marijuana and controlled substance - referenced material:

1. Revenue Form 73A701, "Instructions for Affixing Marijuana and Controlled Substance Tax Evidence (Stamp)", November[,] 2006;

2. Revenue Form 73A702, "Notice of Tax Lien KRS 138 870 Marijuana and Controlled Substance Tax", November 2006; [June, 2001;] and

3. Revenue Form 73A703, "Marijuana or Controlled Substance Stamp Order Form", November[,] 2006,

(i) Motor fuels - referenced material:

1. Revenue Form 72A004, "Motor Fuels Tax Watercraft Refund Bond", August[,] 2006;

2. Revenue Form 72A005, "Application for Approval to Sell Watercraft Refund Motor Fuels - Public Boat Dock", December 2007; [August, 2006;]

3. Revenue Form 72A006, "Motor Fuel Tax Refund Application - Public Boat Dock", October[,] 2006;

4. Revenue Form 72A010, "Motor Fuel Tax Refund Permit Holder's Bond", October 2006; [July, 1989,]

5. Revenue Form 72A011, "Petroleum Storage Tank Environmental Assurance Fee Monthly Report", October[,] 2006;

6 Revenue Form 72A052, "Kentucky Motor Fuels Tax Refund Permit", July 2007; [August, 2006;]

7. Revenue Form 72A053-A, "Application for Refund of Kentucky Motor Fuel Tax Paid on Nonhighway Motor Fuels", July 2007; [October, 2006;]

8. Revenue Form 72A065, "Aviation Gasoline Tax Refund

Bond", October[,] 2006;

9. Revenue Form 72A066, "Application for Refund of Kentucky Tax Paid on Gasoline Used in Operation of Aircraft", August[,] 2006;

10. Revenue Form 72A067, "Application for Approval to Receive a Refund of Aviation Motor Fuels", December 2007; [August, 2006,]

11. Revenue Form 72A071, "Motor Fuels Tax Refund Bond (City and Suburban Bus, Nonprofit Bus, Senior Citizen Transportation, or Taxicabs)", October[,] 2006;

12. Revenue Form 72A072, "Application for Motor Fuel Refund - City and Suburban Bus Companies, Nonprofit Bus Companies, Senior Citizen Transportation and Taxicab Companies", August[,] 2005;

13. 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", October[,] 2006,

[14. Revenue Form 72A075, "Receipts of Unreported Alcohol or Other Additives", August, 2005;

15. Revenue Form 72A077, "Licensed Gasoline Dealer's Monthly Report of Gasoline Sales to U.S. Government", October, 2006;]

14. [16.] Revenue Form 72A078, "Statement of Claim for Accountable Loss of Motor Fuel", October[,] 2006;

[17. Revenue Form 72A080, "Report of Gasoline Received From Licensed Kentucky Dealers", October, 2006;

18. Revenue Form 72A081, "Report of Gasoline Imported from Other States", October, 2006;

19. Revenue Form 72A081-P, "Purchaser's Report Gasoline Imported into Kentucky (Kentucky Tax Paid to Supplier)", October, 2006;

20. Revenue Form 72A081-S, "Supplier's Report Gasoline Imported into Kentucky (Kentucky Tax Paid by Supplier)", October, 2006;

21. Revenue Form 72A082, "Report of Gasoline Imported", October, 2006;

22. Revenue Form 72A083, "Report of Gasoline Received from Terminal or Refinery", October, 2006;

23. Revenue Form 72A084, "Report of Gasoline Exported", October, 2006;

24. Revenue Form 72A085, "Report of Gasoline Sold to Licensed Kentucky Dealers", October, 2006;

25. Revenue Form 72A086, "Report of Gasoline Withdrawals from Terminal Storage", October, 2006;

26. Revenue Form 72A087, "Report of Gasoline Withdrawals to Licensed Kentucky Dealers", October, 2006;

27. Revenue Form 72A088, "Report of Gasoline Withdrawals Exported or Sold for Export", October, 2006,]

15. [28.] Revenue Form 72A089, "Licensed Gasoline Dealer's Monthly Report", July 2007; [August, 2005,

29. Revenue Form 72A090, "Gasoline Dealer's Monthly Terminal Storage Report", October, 2006,

30. Revenue Form 72A091, "Gasoline Schedule of Sales Qualifying for Agricultural Tax Credit", October, 2006,]

16. [31.] Revenue Form 72A098, "Transporter's Report of Motor Fuel Delivered", July 2007; [October, 2006;]

17. Revenue Form 72A099, "Transporter's Report", July 2007;

[32. Revenue Form 72A103, "Licensed Gasoline Dealer's Estimated Tax Payment", August, 2006;

33. Revenue Form 72A107, "Licensed Special Fuels Dealer's Monthly Report of Special Fuels Sales to U.S. Government", October, 2006,]

18 [34.] Revenue Form 72A110, "Certification of Motor Fuels Nonhighway Use", December[,] 2005;

[35. Revenue Form 72A124, "Report of Kerosene and Other Receipts Received and/or Blended", October, 2006;

36. Revenue Form 72A127, "Special Fuels Dealer's Schedule of Sales Qualifying for State or Local Government Agency Credit", October, 2006;

37. Revenue Form 72A128, "Special Fuels Dealer's Schedule of Sales Qualifying for Nonprofit Religious, Chantable or Educational Organization Credit", October, 2006;

38. Revenue Form 72A129, "Special Fuels Schedule of Sales Qualifying for Commercial Off-Road Use Tax Credit", October, 2006;

39. Revenue Form 72A131, "Special Fuels Schedule of Sales Qualifying for Agricultural Tax Credit", October, 2006;

40. Revenue Form 72A132, "Special Fuels Schedule of Sales Qualifying for Residential Heating Tax Credit", October, 2006;]

19 [41.] Revenue Form 72A135, "Application for Kentucky Motor Fuels Tax Refund Permit", December 2007; [October, 2006,]

20 [42.] Revenue Form 72A138, "Licensed Special Fuels Dealer's Monthly Report", July 2007; [October, 2006,]

[43. Revenue Form 72A153, "Report of Special Fuels Received from Licensed Kentucky Dealers", October, 2006;

44. Revenue Form 72A154, "Report of Special Fuels Imported from Other States", October, 2006;

45. Revenue Form 72A154-P, "Purchaser's Report Special Fuels Imported (Kentucky Tax Paid to Supplier)" October, 2006,

46. Revenue Form 72A154-S, "Supplier's Report Special Fuels Imported (Kentucky Tax Paid by Supplier)", October, 2006,

47. Revenue Form 72A155, "Report of Special Fuels Exported or Sold for Export", October, 2006,

48. Revenue Form 72A156, "Report of Special Fuels Sold to Licensed Kentucky Dealers", October, 2006;

49. Revenue Form 72A159, "Report of Special Fuels Sold for Exclusive Use by Railroad Companies for Nonhighway Purposes", October, 2006;

50. Revenue Form 72A160, "Licensed Special Fuels Dealer's Estimated Tax Payment", October, 2006;]

21 [51.] Revenue Form 72A161, "Monthly Report Liquefied Petroleum Gas Dealer", July 2007; [October, 2006,]

[52. Revenue Form 72A162, "Report of Liquefied Petroleum Gas Motor Fuels", October, 2006,]

22 [53.] Revenue Form 72A170, "Special Fuels Dealer's Monthly Terminal Storage Report", July 2007; [October, 2006;

54. Revenue Form 72A171, "Report of Special Fuels Imported", October, 2006;

55 Revenue Form 72A172, "Report of Special Fuels Received from Terminal or Refinery", October, 2006,

56. Revenue Form 72A173, "Report of Special Fuels Withdrawals to Licensed Kentucky Dealers", October, 2006;

57. Revenue Form 72A174, "Report of Special Fuels Withdrawals Exported or Sold for Export", October, 2006;

58. Revenue Form 72A175, "Report of Special Fuels Withdrawals from Terminal Storage", October, 2006;]

23. Revenue Form 72A178, "Distributor's Schedule of Disbursements" July 2007;

24 Revenue Form 72A179, "Distributor's Schedule of Receipts" July 2007;

25. Revenue Form 72A180, "Terminal Operator Schedule of Receipts" July 2007;

26. Revenue Form 72A181, "Terminal Operator Schedule of Disbursements" July 2007;

[59 Revenue Form 72A200, "Special Fuels Dealer's Schedule of Dyed Diesel Credits and Tax Due", July, 2000,

60. Revenue Form 72A210, "Report of Dyed Diesel Received from Licensed Kentucky Dealers", July, 2000;

61. Revenue Form 72A211, "Report of Dyed Diesel Imported from Other States", July, 2000;

62. Revenue Form 72A215, "Report of Kerosene and Other Receipts Received and/or Blended with Dyed Diesel", July, 2000;

63. Revenue Form 72A220, "Dyed Diesel Monthly Terminal Storage Report", July, 2000;

64. Revenue Form 72A221, "Report of Dyed Diesel Imported", July, 2000,

65 Revenue Form 72A222, "Report of Dyed Diesel Received from Terminal or Refinery", July, 2000;

66. Revenue Form 72A223, "Report of Dyed Diesel Withdrawals to Licensed Kentucky Dealers", July, 2000;

67. Revenue Form 72A224, "Report of Dyed Diesel Withdrawals Exported or Sold for Export", July, 2000;

68. Revenue Form 72A225, "Report of Dyed Diesel Withdrawals from Terminal Storage", July, 2000;

69. Revenue Form 72A230, "Report of Dyed Diesel Exported or Sold for Export", July, 2000,

70 Revenue Form 72A231, "Report of Dyed Diesel Sold to

~~Licensed Kentucky Dealers", July, 2000;~~

~~71. Revenue Form 72A232, "Statement of Claim for Accountable Loss of Dyed Diesel", July, 2000,~~

~~72. Revenue Form 72A233, "Report of Dyed Diesel Sold for Exclusive Use by Railroad Companies for Nonhighway Purposes", July, 2000;~~

~~73. Revenue Form 72A234, "Licensed Special Fuels Dealer's Monthly Report of Dyed Diesel Sales to U.S. Government", July, 2000;~~

~~74. Revenue Form 72A240, "Special Fuels Dealer's Schedule of Dyed Diesel Sales Qualifying for Nonhighway Use Tax Credit", July, 2000,~~]

27.[~~75.~~] Revenue Form 72A300, "Tax Registration Application for Motor Fuels License", May 2007; [~~October, 2005,~~]

28. [~~76.~~] Revenue Form 72A301, "Motor Fuels License Bond", October[,] 2006;

29 [~~77.~~] Revenue Form 72A302, "Motor Fuels License", July 2007; [~~July, 2006; and~~]

30 [~~78.~~] Revenue Form 72A303, "Election Application/Cancellation Form"[,]September[,] 2006; and

31. Revenue Form 72A304, "Motor Fuel Tax Electronic Filing Application", December 2007.

(j) Motor vehicle usage tax - referenced material:

1. Revenue Form 71A010, "Motor Vehicle Usage Tax - Vehicle Condition Refund Application[,]" August[,] 2006;

2. Revenue Form 71A100, "Affidavit of Total Consideration Given for a Motor Vehicle", August[,] 2006;

3. Revenue Form 71A101, "Motor Vehicle Usage Tax Multi-Purpose Form", April[,] 2005;

4. Revenue Form 71A102, "Questionnaire", August[,] 2000;

5. Revenue Form 71A151, "Enterprise Zone Motor Vehicle Usage Tax Exemption Certification", October[,] 2005;

6. Revenue Form 71A174, "County Clerk's Adjusted Recapitulation of Motor Vehicle Usage Tax - Weekly Report", June[,] 1991;

7. Revenue Form 71A174-A, "County Clerk's Recapitulation of Motor Vehicle Usage Tax - Interim Report", June[,] 1991;

8. Revenue Form 71F004, "Motor Vehicle Usage Tax - Loaner-Rental Program", March[,] 2006;

9. Revenue Form 72A007, "Affidavit of Non-highway Use", July 2007; [~~June, 2005;~~]

10. Revenue Form 73A054, "Kentucky Application for Dealer Loaner/Rental Vehicle Tax", August[,] 2006;

11. Revenue Form 73A055, "Monthly Report for Dealer Loaner/Rental Vehicle Tax", January[,] 2005;

12 Revenue Form 73A070, "Motor Vehicle Usage Tax Request for Extension of Deposit/ACH Call-In", November[,] 2005;

(k) Racing taxes - referenced matenal. Revenue Form 73A100, "Race Track Pari-Mutuel and Admissions Report", December[,] 2006;

(l) Transient room tax - referenced material. Revenue Form 73A850, "Transient Room Tax Monthly Return", April 2005;

(m) Utility gross receipts license tax - referenced material:

1. Revenue Form 73A900, "Utility Gross Receipts License Tax Application", July[,] 2005;

2. Revenue Form 73A901, "Utility Gross Receipts License Tax Return", August[,] 2005;

3. Revenue Form 73A901(I), "Instructions for Utility Gross Receipts License Tax Return", January[,] 2006;

4. Revenue Form 73A902, "Utility Gross Receipts License Tax (UGRLT) Energy Exemption Annual Return", September[,] 2006;

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

(n) [~~(m)~~] Waste tire tax - referenced material:

1. Revenue Form 73A051, "Motor Vehicle Tire Fee Report", March[,] 2005.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Revenue, 501 High Street[~~200 Fair Oaks Lane~~], Frankfort, Kentucky 40620, or at any Kentucky Department of Revenue Taxpayer Service Center, Monday through Friday, 8 a.m. to 5 p.m.

WILLIAM M. COX, SR., Commissioner

APPROVED BY AGENCY: May 21, 2008

FILED WITH LRC: May 22, 2008 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed new administrative regulation shall be held on July 23, 2008, at 10 a.m. in Room 386, Capitol Annex Building, 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, 2008. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person noted below.

CONTACT PERSON: Richard Dobson, Executive Director, Office of Sales and Excise Taxes, Department of Revenue, Finance and Administration Cabinet, 501 High Street, Frankfort, Kentucky 40601, phone (502) 564-5523, fax (502) 564-2906.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Richard Dobson, Executive Director

(1) Provide a brief summary of:

(a) What this administrative regulation does: KRS 131.130(3) authorizes the Department of Revenue to prescribe forms necessary for the administration of any revenue law by the promulgation of an administrative regulation incorporating the forms by reference. This administrative regulation incorporates by reference the required revenue forms used in the administration of miscellaneous taxes by the Department of Revenue other than Income Taxes, Sales and Use Tax, Telecommunications Excise and Gross Revenues Tax, Severance Taxes and Property Taxes.

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

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 131.130(3) authorizes the Department of Revenue to prescribe forms necessary for the administration of any revenue law by the promulgation of an administrative regulation incorporating the forms by reference. This administrative regulation incorporates by reference the required revenue forms used in the administration of miscellaneous taxes by the Department of Revenue other than Income Taxes, Sales and Use Tax, Telecommunications Excise and Gross Revenues Tax, Severance Taxes and Property Taxes.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation incorporates by reference the required forms administered by the Department of Revenue used in the administration of miscellaneous taxes other than Income Taxes, Sales and Use Tax, Telecommunications Excise and Gross Revenues Tax, Severance Taxes and Property Taxes.

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

(a) How the amendment will change this existing administrative regulation: Not applicable.

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

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

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

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

will be affected to the extent they utilize forms administered by the Department of Revenue. The Department of Revenue will be affected to the extent that it administers the referenced forms.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment. All entities identified in question (3) shall use the forms listed in this regulation for tax compliance purposes.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): None of the entities identified in question (3) will incur additional costs as the result of this regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Consistency in compliance with the statutes.

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

(a) Initially: The Department of Revenue will not incur additional costs as the result of this regulation.

(b) On a continuing basis: The Department of Revenue will not incur additional costs as the result of this regulation.

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

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: This administrative regulation does not require an increase in fees or funding.

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

(9) TIERING: Is tiering applied? Tiering was not applied because the requirements of this regulation apply to every taxpayer.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Finance and Administration Cabinet, Department of Revenue, Office of Sales and Excise Taxes, Division of Miscellaneous Taxes, Road Fund Branch, Miscellaneous Tax Branch, Motor Vehicle Usage Tax Section, Motor Fuels Tax Audit Section, Motor Fuels Tax Compliance, Finance Tax Section, and the Excise Tax Section. The section level shall be responsible for creation and updating of forms.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 131.130(1)

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No change.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No change.

(c) How much will it cost to administer this program for the first year? The administrative cost will be absorbed in the normal operating cost of the Department.

(d) How much will it cost to administer this program for subsequent years? The same administrative cost will be absorbed in the normal operating budget of the Department.

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

Revenues (+/-): Other Explanation:

Expenditures (+/-):

FINANCE AND ADMINISTRATION CABINET
Department of Revenue
Office of Sales and Excise Taxes
(Amendment)

103 KAR 30:091. Sales to farmers.

RELATES TO: KRS 139.260, 139.470, 139.480

STATUTORY AUTHORITY: ~~[KRS Chapter 13A,]~~ 131.130(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 131.130(1) authorizes the Department of Revenue to promulgate administrative regulations necessary for the administration and enforcement of all tax laws in Kentucky. The administrative regulation is necessary to interpret the sales and use tax law as it relates to sales to farmers.

Section 1. Definitions. (1) "Attachments" means tangible personal property necessary for the operation of farm machinery or implements that are purchased primarily to improve efficiency or to diversify the function which the machinery or implements are capable of performing. Attachments shall include replacement attachments and repair and replacement parts.

(2) "On-farm facility" means land, ponds, streams, fencing and structures within the premises of property used in the pursuits provided under KRS 139.480 for:

(a) Storing, drying, processing, and handling grain and soybean;

(b) Raising poultry or livestock;

(c) Breeding and producing ratite birds, feathers, hides, breeding stock, eggs, meat, and ratite by-products;

(d) Breeding and producing llama and alpaca hides, breeding stock, fiber and wool products, meat, and llama and alpaca by-products;

(e) Breeding and producing buffalo hides, breeding stock, meat, and buffalo by-products;

(f) Raising aquatic organisms by a person regularly engaged in the business of producing products of aquaculture, as defined in KRS 260.960, for sale; and

(g) Breeding and producing cervid hides, breeding stock, meat, and cervid by-products.

(3) "Production of crops" means the occupation of tilling the soil as a business to produce hay, tobacco, soybeans, fruit, vegetables, timber, flowers, shrubs, etc. for sale.

Section 2. Exempt "farm machinery" shall include motor or animal-drawn or operated farm machinery or implements. The following list contains examples of items which may qualify for exemption if used exclusively and directly for farming as provided in KRS 139.480(11), in addition to the more commonly known items of "farm machinery":

(1) All terrain vehicles - utility (ATVs);
(2) Automatic and portable feeding equipment:
(a) Livestock creep feeders;
(b) Poultry feeders; and
(c) Round bale feeders.
(3) Automatic egg gathering systems;
(4) Automatic washers;
(5) Automatic waterers;
(6) Brooders.
(7) Bulk tanks (mechanical);
(8) Bushhogs;
(9) Chain saws;
(10) Cleaning machinery (mechanical);
(11) Clippers for livestock;
(12) Coke stoves for curing tobacco;
(13) Cooling units and cooling fans;
(14) Egg processing machinery;
(15) Farm wagons;
(16) Grain and hay elevators;

(17) Hay mowers;
(18) Heaters (portable);
(19) Incubators;
(20) Insecticide sprayers (hand-held);
(21) Irrigation systems;
(22) Log splitters;
(23) Milking machines;
(24) Posthole diggers (mechanical);
(25) Roller mills;
(26) Seed sowers (automatic);
(27) Shop welders and other machinery (mechanical) exclusively for use to maintain other farm machinery;
(28) Silo unloaders (augers);
(29) Tilt table for livestock;
(30) Tobacco curing machinery;
(31) Tobacco setter;
(32) Tobacco transplant system machinery; and
(a). Clipping;
(b) Heating;
(c) Injector systems;
(d) Seeding; and
(e) Ventilation.
(33) Tractor mounted sprayer.

Section 3. Exempt Chemicals. This category of exempt items refers to chemicals used in the production of crops as a business to improve quality and quantity of plant growth or for use in raising of livestock, poultry, ratite birds, llamas, alpacas, buffalos, aquatic organisms, and cervids that function as an insecticide, fungicide, herbicide, or rodenticide. The following list contains examples of items that may qualify for the farm chemical exemption as provided in KRS 139.480(8) in addition to the more commonly known items of farm chemicals:
(1) Adjuvant to enhance herbicide coverage of crops;
(2) Antiseptic wipes to clean cows' udders;
(3) Insecticidal dipping chemicals;
(4) Insecticidal ear tags;
(5) Lime and hydrated lime for disinfectant;
(6) Methyl bromide gas and similar tobacco chemicals; and
(7) Seed flow enhancers to optimize seed planting and spacing, including talc and graphite.

Section 4. Exempt Feed. The following list contains examples of items that may qualify for the feed exemptions as provided in KRS 139.480:
(1) Bag and block salt;
(2) Dietary supplements as a feed additive;
(3) Feed for:
(a) Alpaca;
(b) Aquatic organisms;
(c) Beef cattle;
(d) Buffalo;
(e) Cervid;
(f) Dairy cattle;
(g) Feeder animals;
(h) Goats;
(i) Hogs;
(j) Llamas;
(k) Poultry;
(l) Ratite birds; and
(m) Sheep.
(4) Milk replacer;
(5) Mineral blocks;
(6) Protein blocks;
(7) Protein supplements; and
(8) Special medicated feed mixes except separate medicine purchases.

Section 5. Exempt On-farm Facilities. The list in this subsection shall serve as an example of items that may qualify for the exemption provided for all on-farm facilities under KRS 139.480:
(1) Branding iron heaters and irons;
(2) Bucket racks;
(3) Building materials:
(a) Concrete;
(b) Gravel;
(c) Guttering;
(d) Insulation;
(e) Lumber;
(f) Nails;
(g) Paint;
(h) Rock;
(i) Roofing materials; and
(j) Sand.
(4) Calf crates;
(5) Calf hutches;
(6) Corrals (portable);
(7) Culvert pipe;
(8) Drainage tile;
(9) Erosion mats;
(10) Farm gates;
(11) Farrowing crates;
(12) Feeding system materials and equipment:
(a) Feed buckets;
(b) Feed bunks for farm wagons;
(c) Hoses;
(d) Nozzles;
(e) Pipelines; and
(f) Tubes.
(13) Fence chargers (electric);
(14) Fencing materials:
(a) Insulators and other components used in an electrical fence system;
(b) Planks;
(c) Posts;
(d) Staples; and
(e) Wire.
(15) Hog holding crates;
(16) Insect control (electric);
(17) Livestock chutes;
(18) Livestock headgates;
(19) Livestock oilers;
(20) Manure pit for livestock;
(21) Pond sealers;
(22) Salt and mineral feeders;
(23) Silage covers;
(24) Silos;
(25) Silo covers;
(26) Water hydrants; and
(27) Water pipe including plastic and other material.

Section 6. Packaging Materials. The following list contains examples of items exempt if used in the packaging of products for sale in addition to the exemption provided for twine and wire used for baling hay and straw in KRS 139.480(27):
(1) Bags or sacks;
(2) Baskets;
(3) Crates;
(4) Twine; and
(5) Wire.

Section 7. Farm Work Stock. The following list contains examples of items of farm work stock which may qualify for exemption as provided in KRS 139.480(6):
(1) Donkeys;
(2) Draft horses;
(3) Guard dogs, including the Pyrenees and Polish Tatra breeds, to protect sheep, goats, and other livestock;
(4) Herd dogs for herding sheep, cattle, or other livestock;
(5) Jacks; and
(6) Mules.

Section 8. Exempt Attachments; Repair and Replacement Parts. (1) Attachments purchased for use on farm machinery which are necessary to the operation of the machinery or implements are exempt from tax. Examples that may be included in the exempt attachment category are as follows:
(a) Dual wheel assemblies;

(b)Hitches;
(c) Hydraulic systems;
(d) Water tanks; and
(e) Weights.
(2) Repair and replacement parts purchased for use on farm machinery which are necessary to the operation of the machinery are exempt from tax. Examples that may be included in the repair and replacement parts category are:
(a) Batteries;
(b) Bolts;
(c) Chain saw repair parts;
(d) Cutting parts;
(e) Fan belts;
(f) Miscellaneous motor repairs;
(g) Mufflers;
(h) Plow points;
(i) Spark plugs;
(j) Springs;
(k) Tires; and
(l) V-belts.

Section 9. Taxable Items. The following categories of items are not excluded from sales and use tax as provided by KRS 139.480 and are subject to tax:
(1) Nonmechanical containers and nonmechanical storage facilities:
(a) Egg baskets;
(b) Feeders;
(c) Milk cans;
(d) Milk storage tanks;
(e) Oil and gas storage tanks;
(f) Wash tanks; and
(g) Watering tanks.
(2) Hand tools, and wholly hand-operated equipment:
(a) Axes;
(b) Barn brooms;
(c) Barn forks;
(d) Brooms;
(e) Grease guns;
(f) Hoes;
(g) Jacks;
(h) Ladders;
(i) Pitchforks;
(j) Pliers;
(k) Post hole diggers (manual);
(l) Rakes;
(m) Shovels;
(n) Tobacco balers (hand operated);
(o) Wheelbarrows; and
(p) Wrenches.
(3) Accessories not essential to the operation of the farm machinery itself except if sold as a part of an assembled unit:
(a) Air conditioning units;
(b) Cabs;
(c) Canopies;
(d) Cigarette lighters;
(e) Deluxe seats;
(f) Lubricators;
(g) Radios;
(h) Seat cushions or covers; and
(i) Tool or utility boxes.
(4) Miscellaneous equipment, materials, and supplies:
(a) Antifreeze;
(b) Bird seed;
(c) Bromo gas applicators;
(d) Bumper hitch trailers;
(e) Calcium chloride;
(f) Chains;
(g) Charcoal for cistern filtration;
(h) Chicken bedding;
(i) Chicken litter;
(j) Chicken transport cages;
(k) Coke for curing tobacco;
(l) Dog food;
(m) Feed for work stock animals;
(n) Greases;
(o) Hydraulic fluid;
(p) Identification tags;
(q) Lawn and garden equipment;
1. Push mowers;
2. Riding lawn mowers;
3. Rotor tillers;
4. Weedeaters; and
5. Zero turn mowers.
(r) Lubricants;
(s) Milk strainers;
(t) Netting wrap;
(u) Oils;
(v) Rope;
(w) Shrink wrap;
(x) Snaps and washers;
(y) Straw;
(z) Tobacco canvas and other plant bed covers;
(aa) Tobacco knives;
(bb) Tobacco spears;
(cc) Tobacco sticks;
(dd) Tobacco transplant system materials:
1. Plastic;
2. Trays; and
3. Ventilation curtains.
(ee) Tractor paint;
(ff) Transmission fluid;
(gg) Truck batteries;
(hh) Truck tires;
(ii) Wood shavings; and
(jj) Work shoes and boots.
(5) Items which are incorporated into real property, except some materials incorporated into the construction, renovation, or repair of on-farm facilities as provided in KRS 139.480.
(a) Building materials:
1. Concrete;
2. Gravel;
3. Guttering;
4. Insulation;
5. Lumber;
6. Nails;
7. Paint;
8. Rock;
9. Roofing materials; and
10. Sand.
(b) Fencing materials.
1. Insulators and other components used in an electrical fence system;
2. Planks;
3. Posts;
4. Staples; and
5. Wire.
(6) Items purchased for use in raising, feeding, or breeding of horses except water as provided in KRS 139.470(14);
(7) Items purchased for animal health care. The following list contains items that may serve as examples of taxable animal health care products:
(a) Castrators;
(b) Copper sulfate;
(c) Dehorners;
(d) Drench devices;
(e) Elastrator rings and bands;
(f) Livestock oil unless containing insecticide;
(g) Medicines to be administered as feed additive, for internal parasitic control, or otherwise;
(h) Veterinary instruments:
1. Needles;
2. Operating tables; and
3. Syringes.
(i)Vitamins; and
(j) Wormers.

Section 10. Exemption Certificates. (1) A farmer shall issue a

Farm Exemption Certificate, Form 51A158, which is incorporated by reference in 103 KAR 3:020, for the exempt purchase of tangible personal property other than tangible personal property for incorporation into the construction, repair or renovation of on-farm facilities covered under KRS 139.480.

(2) A farmer shall issue an On-farm Facilities Certificate of Exemption for Materials, Machinery and Equipment, Form 51A159, which is incorporated by reference in 103 KAR 3:020, for the exempt purchase of tangible personal property for incorporation into the construction, repair or renovation of on-farm facilities exempt under the provisions of KRS 139.480. A farmer shall issue a separate, individual certificate for new construction, repairs, or renovations. Unless the certificate has an expiration date when submitted jointly with a contractor, the certificate shall remain effective for each project type (new construction, repairs, or renovations) until the purchaser notifies the seller in writing that it is no longer valid.

(3) A contractor may jointly execute an On-farm Facilities Certificate of Exemption for Materials, Machinery, and Equipment, Form 51A159 with a farmer for building materials, machinery, and equipment that are for incorporation into the construction, repair or renovation of an on-farm facility. A contractor shall not use the certificate for the purchase or rental/lease of construction equipment, consumable supplies or other tangible personal property that is not for incorporation into the on-farm facility. A jointly executed On-farm Facilities Certificate of Exemption for Materials, Machinery, and Equipment, Form 51A159, with a contractor shall be acceptable only for purchases made for periods within the effective dates indicated on the certificate at the time of purchase. A contractor shall jointly execute a new certificate with a farmer for additional purchases of materials, machinery, and equipment required for the same project after the initial expiration date or for additional projects.

Section 11. Service Providers. (1) Persons engaged in spraying fertilizer, hauling agricultural lime, or providing other services to persons regularly engaged in farming shall not qualify for the farm machinery exemption.

(2) The service provider shall not execute an exemption certificate on behalf of the farmer for the purchase of fertilizer, agricultural lime or other tangible personal property used to perform the service.

Section 12. [~~Farm Machinery. The farm machinery exemption provided at KRS 139.480(10) applies to motor or animal-drawn or operated farm machinery and implements, including attachments which are necessary to the operation of such machinery and implements. To qualify for exemption, the property must be used in the occupation of tilling the soil for the production of crops (including timber, flowers, fruits, shrubs, etc.) as a business or in the occupation of raising and feeding livestock or poultry or of producing milk, eggs, wool, etc., for sale. The exclusion is not limited to items commonly referred to as "farm machinery" but includes all machinery directly used in the activities listed above.~~

~~Section 2. Exempt Items. Examples of items which qualify for exemption in addition to the more commonly known items of "farm machinery" are irrigation systems, tobacco curing equipment, farm wagons, portable insecticide sprayers, chain saws, mechanical cleaning equipment, mechanical shop equipment, mechanical posthole diggers, silo unloaders (augers), grain and hay elevators, milking machines, automatic washers, mechanical bulk tanks, cooling units, brooders, incubators, automatic egg gathering systems, egg processing equipment, automatic feeding equipment, automatic waterers.~~

~~Section 3. Taxable Items. The following categories of items are excluded from the meaning of the term "farm machinery" and are subject to tax:~~

~~(1) Containers and storage facilities such as milk cans, wash tanks, watering tanks, egg baskets, nonmechanical silos, nonmechanical feeders, and oil and gas storage tanks;~~

~~(2) Hand tools, and wholly hand-operated equipment such as wheelbarrows, hoes, rakes, pitchforks, shovels, brooms, wrenches, pliers, and grease guns;~~

~~(3) Attachments (accessories) not essential to the operation of the machinery itself (except when sold as a part of an assembled unit) such as cigarette lighters, radios, canopies, air conditioning units, cabs, deluxe seats, tool or utility boxes, and lubricators.~~

~~(4) Miscellaneous farm equipment and supplies such as tobacco sticks, tobacco canvas, milk strainers, lawn and garden equipment, oils and greases, and coke;~~

~~(5) Items which are incorporated into real property such as stalls, stanchions, drainage tile, fencing materials, and building materials excepting materials incorporated into the construction, renovation, or repair of:~~

~~(a) On-farm grain or soybean facilities;~~

~~(b) On-farm chicken-raising facilities.~~

~~Section 4. Attachments; Repair and Replacement Parts. (1) "Attachments" to farm machinery or farm implements are tax exempt both upon original purchase and when replaced. The term "attachments" refers to items purchased for use in connection with farm machinery or farm implements primarily to improve efficiency or to diversify the function which the machinery or implements are capable of performing. Included in the "attachment" category are: hydraulic systems, weights, hitches, dual wheel assemblies, other items necessary to the operation of machinery or implements.~~

~~(2) "Repair and replacement parts" purchased for use on farm machinery which are necessary to the operation of such machinery are exempt from tax. Included in the "repair and replacement part" category are: batteries, tires, fan belts, mufflers, spark plugs, miscellaneous motor repairs, plow points, cutting parts, v-belts, bolts, springs, etc.~~

~~Section 5. Exemption Certificates. The sales and use tax law sets forth various types of tangible personal property which may be purchased tax exempt by persons engaged in farming. The exemptions may be found at KRS 139.470(2) and KRS 139.480(4), (5), (6), (7), (8), (10), (13), (14) and (15). The appropriate exemption certificates which a vendor must have on file executed by a farmer to substantiate the nontaxable status of such sales are:~~

~~(1) A properly executed Farm Machinery Exemption Certificate, Revenue Form 51A148 (3-88), for farm machinery and attachments;~~

~~(2) A properly executed Agricultural Certificate of Exemption, Revenue Form 51A106 (4-86), for seed, feed, fertilizer, repair and replacement parts for farm machinery, nonreturnable containers, gasoline, special fuels, liquefied petroleum gas and repair and replacement parts for machinery and equipment which are part of an on-farm grain or soybean facility;~~

~~(3) A properly executed Certificate of Exemption for On-Farm Grain or Soybean Facilities, Revenue Form 51A148-S1 (3-88), for machinery, equipment, attachments and any materials incorporated into the construction, renovation or repair of on-farm grain or soybean facilities; and~~

~~(4) A properly executed Certificate of Exemption for On-Farm Chicken Raising Facilities, Revenue Form 51A153 (6-90), for 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 chickens.~~

~~Section 6. The exemption certificates specified in Section 5 of this administrative regulation are hereby incorporated by reference and may be obtained without charge from the Revenue Cabinet, Frankfort, Kentucky 40601. The certificates may be inspected and copied at the Frankfort office of the Revenue Cabinet located on the fourth floor of the Capitol Annex Building or the Taxpayer Service Centers listed below between the hours of 8 a.m. and 4:30 p.m. (local time).~~

~~Revenue Cabinet Taxpayer Service Centers~~

~~Ashland~~
~~P.O. Box 687~~
~~1422 Winchester Avenue~~
~~Ashland, Kentucky 41105-0687~~
~~(606) 329-8982~~

~~Bowling Green~~
~~P.O. Box 2040~~
~~1502 Westen Avenue~~
~~Bowling Green, Kentucky 42101~~
~~(502) 843-5470~~

~~Corbin~~
~~1707 Eighteenth Street~~
~~Falls Road Plaza, Suite 5~~
~~Corbin, Kentucky 40701~~
~~(606) 528-3322~~

~~Hazard~~
~~233 Birch Street~~
~~P.O. Box 419~~
~~Hazard, Kentucky 40701~~
~~(606) 439-2388~~

~~Hopkinsville~~
~~Hammond Plaza, P.O. Box 695~~
~~Hopkinsville, Kentucky 42240~~
~~(502) 887-2521~~

~~Lexington~~
~~301 East Main Street~~
~~Suite 500~~
~~Lexington, Kentucky 40507~~
~~(606) 233-3837~~

~~Louisville~~
~~620 South Third Street, Suite 102~~
~~Louisville, Kentucky 40202-2402~~
~~(502) 588-4512~~

~~Northern Kentucky~~
~~Kentucky Executive Building~~
~~Room 210~~
~~2055 Dixie Highway~~
~~Fort Mitchell, Kentucky 41011~~
~~(606) 292-6603~~

~~Owensboro~~
~~311 West Second Street~~
~~P.O. Box 628~~
~~Owensboro, Kentucky 42301~~
~~(502) 686-3301~~

~~Paducah~~
~~555 Jefferson Street~~
~~P.O. Box 2336~~
~~Paducah, Kentucky 42002-2336~~
~~(502) 444-8148~~

~~Pikeville~~
~~1279 North Mayo Trail~~
~~Pikeville, Kentucky 41501~~
~~(606) 437-4075~~

~~Section 7.~~] The examples of taxable and nontaxable items contained in this administrative regulation are for illustrative purposes only and are not intended to be all inclusive.

Section 13. (1) This administrative regulation shall replace Revenue Policies 51P090, 51P100, 51P105, 51P120, 51P130, and 51P135.

(2) Revenue Policies 51P090, 51P100, 51P105, 51P120, 51P130, and 51P135 are hereby rescinded and shall be null, void, and unenforceable.

WILLIAM M. COX, Sr., Commissioner
APPROVED BY AGENCY: June 10, 2008
FILED WITH LRC: June 12, 2008 at 4 p.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on the proposed amendment to this administrative regulation shall be held on July 23, 2008 in Room 386, 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, 2008. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person noted below.

CONTACT PERSON: Richard Dobson, Executive Director, Office of Sales and Excise Tax, Kentucky Department of Revenue, 501 High Street, Frankfort, Kentucky 40601, phone (502) 564-5523, fax (502) 564-2906.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Richard Dobson
(1) Provide a brief summary of.
(a) What this administrative regulation does: This regulation interprets the sales and use tax law as it relates to sales to farmers.
(b) The necessity of this administrative regulation: This regulation is necessary to provide interpretation of the sales and use tax as it relates to sales to farmers.
(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 131.130(1) authorizes the Department of Revenue to promulgate administrative regulations necessary for the administration and enforcement of all tax laws in Kentucky.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation clarifies what equipment farmers can buy exempt from tax and preserves previously published guidance.
(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 generally maintains historical administrative guidance provided to the farming community. However, agricultural lime haulers that are currently executing agricultural exemption certificates on behalf of farmers must cease this practice and only submit certificates they are directly eligible for such as resale.
(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to preserve and clarify information previously provided in policies that are being rescinded.
(c) How the amendment conforms to the content of the authorizing statutes: KRS 131.130(1) authorizes the Department of Revenue to promulgate administrative regulations necessary for the administration and enforcement of all tax laws in Kentucky.
(d) How the amendment will assist in the effective administration of the statutes: The language n the amended regulation provides expanded guidance that will assist both farmers and their suppliers when determining taxable and exempt transactions.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are approximately 90,000 farms in the Commonwealth that may rely on this guidance, as well as their related associations and suppliers.
(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new or by the change, if it is an amendment, including:
(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The affected parties will look to the statutory and regulatory provisions referenced in this regulation for guidance regarding farming related exemptions for sales and use tax.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There should be minimal costs if any associated with compliance because of the informational and replacement nature of this regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The entities will be maintaining compliance with the true administrative authority regarding sales and use tax exemptions for farming operations. Thus, exposure to assessment upon audit and corresponding penalties and interest will be avoided

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

(a) Initially: Nothing beyond normal administrative expenses for regulation promulgation.

(b) On a continuing basis: Nothing beyond routine administrative duties.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: General department operating funds.

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

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

(9) TIERING. Is tiering applied? Tiering does not apply to this administrative regulation This regulation applies to all farming operations and corresponding suppliers; therefore, there are no separate "tiers" to regulate.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Finance and Administration Cabinet, Department of Revenue, Office of Sales and Excise Taxes, Division of Sales and Use Tax will be impacted.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 131.130(1), 139.710.

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

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

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

(c) How much will it cost to administer this program for the first year? Nothing

(d) How much will it cost to administer this program for subsequent years? Nothing

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

Revenues (+/-):
Expenditures (+/-):
Other Explanation:

FINANCE AND ADMINISTRATION CABINET
Kentucky Retirement Systems
(Amendment)

105 KAR 1:160. Sick leave plans.

RELATES TO: KRS 61.546, 61.5525, 78.616, 161.155
STATUTORY AUTHORITY. KRS 61.645(9)(g)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 61.645(9)(g) authorizes the Board of Trustees of Kentucky Retirement Systems to promulgate all administrative regulations necessary or proper in order to carry out the provisions of KRS 61.515 to 61.705, 16.510 to 16 652, and 78.520 to 78.852. KRS 61.546 provides for retirement service credit for unused sick leave for members of the Kentucky Employees Retirement System and the State Police Retirement System. KRS 78.616 provides for retirement service credit for unused sick leave for members of the County Employees Retirement System. This administrative regulation establishes the requirements for participation in the program by individual county agencies, calculation of the service credit, and payment of the employer's cost of the credit. This administrative regulation also establishes the formula for prorating sick leave if it is earned by a member partly under SPRS, partly under KRS hazardous duty coverage, and partly under the Kentucky Employees Retirement System nonhazardous coverage.

Section 1. Definitions. (1) "Alternate plan" means the sick leave program described in KRS 78 616(5)

(2) "Standard plan" means the sick leave program described in KRS 61.546 or 78.616(1), (3) and (4).

Section 2. An agency participating in the County Employees Retirement System may provide a sick leave program under KRS 78 616 by adopting an order appropriate to the agency.

(1) Only one (1) sick leave program under KRS 78.616 shall be offered to the employees of an agency.

(2) The agency shall certify to the retirement system that the program shall be universally administered.

(3) The agency shall pay all costs of the program.

(4) The agency shall certify to the retirement system the number of hours that constitutes a regular working day for employees of the agency.

(5)(a) If an agency participating in the County Employees Retirement System has no retirement sick leave program, it may choose the standard plan or it may choose the alternate plan.

1. An agency adopting the standard plan may elect:

a To purchase credit only for the first six (6) months of accrued sick leave;

b. To purchase credit for the first six (6) months and to pay fifty (50) percent of the cost for service above six (6) months; or

c. To purchase credit for all accumulated sick leave.

2. An agency which elects to pay only for the first six (6) months of accumulated sick leave may at a later date elect to pay fifty (50) percent or all of the cost of service above six (6) months. An agency which elects to pay for the first six (6) months and fifty (50) percent of the cost for service above six (6) months, may at a later date elect to pay for all accrued sick leave.

3. If the agency adopted the standard plan prior to July 1988, it may choose to adopt the alternate plan.

4. Within thirty (30) days of adoption of a sick leave plan, the agency shall file at the retirement office a description of the agency's sick leave policy which shall specify:

a. The maximum sick leave that may be accrued;

b. Whether the policy applies to sick leave accrued prior to the adoption of the sick leave plan; and

c. Whether the policy applies to current and former employees or only to employees who retire from the agency.

(b) Agencies participating in the Kentucky Employees Retirement System or the State Police Retirement System shall provide sick leave credit for all accrued sick leave.

(c) Once a sick leave program is adopted, the agency shall continue to offer a sick leave program to its employees.

Section 3. If the agency adopts the standard plan, upon a member's retirement

(1) Each agency participating in the Kentucky Employees Retirement System, County Employees Retirement System, or State Police Retirement System with which the member has accrued sick leave credit or to which his accrued sick leave transferred, shall certify the unused sick leave credit which the member has accrued on Sick Leave Authorization, Form 6500.

(2)(a) The retirement system shall determine the number of

days of credit and divide the number of days by twenty-one (21), the average number of working days in a month, unless the agency verifies an alternate number of average working days per month. If the remainder is equal to or greater than eleven (11), the member shall receive credit for an additional month. If an employee has an alternate work schedule, the agency shall verify an alternate number of average working days per month

(b) For each agency participating in the Kentucky Employees Retirement System or County Employees Retirement System with which the member accrued sick leave credit, the cost of the credit, determined by utilizing the member's final compensation with the formula described in KRS 61.5525, shall be paid by the agency within thirty (30) days of notification by the retirement system.

(c) If the member accrued sick leave credit in the Kentucky Employees Retirement System, the last agency with which the member was employed shall pay the cost of sick leave credit in excess of six (6) months, if any

(3)(a) If the total sick leave accrued at a County Employees Retirement System agency is greater than six (6) months and the agency does not pay for service greater than six (6) months, the employee may purchase some or all of the additional months by paying the cost, determined by utilizing the member's final compensation with the formula described in KRS 61 5525, to the retirement system before his termination, but no earlier than three (3) months from his effective retirement date.

(b) If the total sick leave accrued at a County Employees Retirement System agency is greater than six (6) months and the agency pays fifty (50) percent of the cost of additional months, the employee shall receive credit for all or some of the additional months if the employee pays fifty (50) percent of the cost determined by utilizing the member's final compensation with the formula described in KRS 61.5525, to the retirement system before his termination, but no earlier than three (3) months from his effective retirement date, and the employer pays the remaining fifty (50) percent.

Section 4. An agency adopting the alternate plan shall also certify the maximum number of sick leave days that an employee may accumulate prior to termination.

(1) The agency shall compensate the member for all accrued sick leave up to the maximum allowed, upon termination. If the employee is a classified employee of a school board, the agency shall compensate the employee for accrued sick leave, upon the employee's retirement or death, pursuant to KRS 161.155. The rate of compensation for each day shall be based on the employee's current rate of pay.

(2) Each month, the agency shall withhold employer and employee contributions from the sick leave compensation of employees who terminate, and shall remit the contributions along with the Form 6501 for each employee. The forms and contributions deducted during the month shall be sent to the retirement office within ten (10) days following the end of the month. The contributions and compensation shall not be reported with the regular payroll.

(3) If the member has one (1) or more months of service credit as determined in Section 3 of this administrative regulation, the service shall be added to the member's total service credit.

(4) Compensation and service shall be included in the member's final compensation as follows:

(a) The member's sick leave credit expressed in months and the compensation for those months shall be included in the fiscal year with the highest average monthly salary used in his final compensation until the service credit in the fiscal year has reached twelve (12) months.

(b) When service credit in the fiscal year with the highest average monthly salary has reached twelve (12) months, the remaining months of service and compensation shall be included in the fiscal year with the lowest average monthly salary used in his final compensation until service credit in the fiscal year has reached twelve (12) months.

(c) When service credit in the two (2) fiscal years with the highest and lowest average monthly salary used in his final compensation have reached twelve (12) months, the remaining months and compensation shall be used in lieu of the member's service and salary in the fiscal year with the lowest average monthly salary of the members final compensation. The salary replaced shall be the monthly average of the member's actual salary in the fiscal year.

Section 5 An employee who has service credit in the Kentucky Employees Retirement System as hazardous and nonhazardous, or who has service credit in both the Kentucky Employees Retirement System and the State Police Retirement System, shall have accrued sick leave prorated between the systems and between the hazardous and nonhazardous accounts based on the ratio of service in each account, including purchased service, and to the total service credit.

Section 6. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) ["]Form 6500, "Sick Leave Authorization", [~~(rev.~~] 11/00[)~~"~~]; and

(b) ["]Form 6501, "Alternate Sick Leave Authorization", [~~(rev.~~] 11/00[)~~"~~]

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at Kentucky Retirement Systems,[~~from the retirement office at~~] Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky 40601, Monday through Friday, [~~between the hours of~~] 8 a.m. to[~~and~~] 4:30 p.m. [~~Monday through Friday~~].

RANDY OVERSTREET, Chair

APPROVED BY AGENCY: May 15, 2008

FILED WITH LRC: June 13, 2008 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 22, 2008, at 9 a.m. at the Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by July 15, 2008, five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by this date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given the opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until July 31, 2008. 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: J. Eric Wampler, Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky 40601, phone (502) 696-8800 ext. 5501, fax (502) 696-8801.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: J. Eric Wampler

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation provides for procedures for determining retirement service credit for unused sick leave for members of the County Employees Retirement System, the requirements for participation in the sick leave program by individual county agencies, calculation of the service credit, payment of the employer's cost of the credit, and also establishes the formula for prorating sick leave if it is earned by a member partly under SPRS, partly under KRS hazardous duty coverage, and partly under the KERS nonhazardous coverage.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to set out the procedures for determining retirement service credit for unused sick leave for members of the County Employees Retirement System, the requirements for participation in the sick leave program by individual county agencies, calculation of the service credit, payment of the employer's cost of the credit, and also establishes the formula for prorating sick leave if it is earned by a member partly under SPRS, partly under KRS hazard-

ous duty coverage, and partly under the KERS nonhazardous coverage.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 61.546 and 78.616 provide for service credit at the time of retirement for unused sick leave. This administrative regulation establishes the procedures for calculating and crediting of service credit for unused sick leave at the time of retirement.

(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 the procedures for calculating and crediting of service credit for unused sick leave at the time of retirement.

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

(a) How the amendment will change this existing administrative regulation: This amendment provides for the employer to certify an alternate number of average days worked in a month for employees who work a non-standard work schedule in order to establish the correct number of months of service to be credited for unused sick leave of employees working a non-standard work schedule.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to require the employer to certify an alternate number of average days worked in a month for employees who work a nonstandard work schedule in order to establish the correct number of months of unused sick leave for employees working a non-standard work schedule.

(c) How the amendment conforms to the content of the authorizing statutes: The authorizing statutes provide that members will receive service credit for unused sick leave at the time of retirement and this administrative regulation provides the procedure for an employee who works a non-standard work schedule to receive the correct number of months of service credit for unused sick leave.

(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 providing for the employer to certify an alternate number of average days worked in a month for employees who work a non-standard work schedule in order to establish the correct number of service credit for employees working a nonstandard work schedule.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Those individuals or entities affected by this administrative regulation are those members who work a nonstandard work schedule, an unknown number.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: They will have to certify the average number of days a member works per month when they certify the amount of unused sick leave the member has, if the member works a nonstandard work schedule.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no cost.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Retiring CERS members will receive credit for the correct number of months of service credit for unused sick leave.

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

(a) Initially: There is no cost to implement this regulation.

(b) On a continuing basis: There is no continuing cost.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Administrative expenses of the retirement system are paid from the Retirement Allowance Account (trust and agency funds).

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

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

(9) TIERING: Is tiering applied? Tiering is not applied. Procedures are the same for all affected individuals.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Each agency participating in KERS, CERS, or SPRS who provide service credit to retiring employees for unused sick leave.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 61.546 provides for retirement service credit for unused sick leave for members of the Kentucky Employees Retirement System and the State Police Retirement System. KRS 78.616 provides for retirement service credit for unused sick leave for members of the County Employees Retirement System.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. The amendment to this regulation is not estimated to have an effect on the expenditures or revenues of a state or local government agency.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The amendment to this regulation is not estimated to have an effect on the revenues of a state or local government agency for the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The amendment to this regulation is not estimated to have an effect on the revenues of a state or local government agency for subsequent years.

(c) How much will it cost to administer this program for the first year? State and local government are not estimated to incur additional costs to administer the amendment to this administrative regulation for the first year.

(d) How much will it cost to administer this program for subsequent years? State and local government are not estimated to incur additional costs to administer the amendment to this administrative regulation for subsequent years.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation: This amendment of this administrative regulation should not have a fiscal impact upon a state or local government agency because those agencies are currently required to certify sick leave and pay the cost of the certified sick leave if they are participating in the one of the sick leave programs. This amendment to the administrative regulation allows the employers to certify and pay the cost of an accurate amount of sick leave for employees who work an alternate work schedule.

FINANCE AND ADMINISTRATION CABINET
Kentucky Retirement Systems
(Amendment)

105 KAR 1:170. Membership form requirements.

RELATES TO: KRS 16.530, 61.525, 61.526, 61.540, 61.542, 61.545, 61.625, 78.540

STATUTORY AUTHORITY: KRS 61.645(9)(g), 26 C.F.R. 1.401-1(b)(1)(i), 26 U.S.C. 401(a)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 61.645(9)(g) authorizes the Board of Trustees of Kentucky Retirement Systems to promulgate all administrative regulations neces-

sary or proper in order to carry out the provisions of KRS 61.515 to 61.705, 16.510 to 16.652, and 78 520 to 78.852. KRS 16.530, 61.526 and 61.540 require a member of the Kentucky Employees Retirement System, County Employees Retirement System or State Police Retirement System to file information with the Board of Trustees as a condition of membership. KRS 61.542 requires a member to file a designation of beneficiary. KRS 61.625 establishes the conditions under which a member may apply for a refund. 26 U.S.C. 401(a) provides that a qualified pension plan cannot make distributions prior to normal retirement age if a separation from service has not occurred. This administrative regulation establishes the information required for membership and establishes that the member shall not receive a refund unless the member has terminated employment.

Section 1. An employee eligible for participation on the date his agency first participates shall complete a "Form 2010, Election or Rejection of Participation", designating his desire to participate in or waive participation and benefits in the retirement system. The original form shall be kept on file in the retirement office.

Section 2. Within thirty (30) days of participation, an employee who is required to participate or who elects to participate shall complete a "Form 2001, Membership Information". The membership form shall be kept on file in the retirement office.

Section 3. An employee may also complete a "Form 2035, Beneficiary Designation" which shall be sent to the retirement office.

Section 4. (1) If an employee is simultaneously eligible to participate in more than one (1) of the Kentucky Retirement Systems, the employee may elect to participate in only one (1) system and waive participation in and any rights to benefits from the employment in the other system during the period of simultaneous employment.

(2) The employee shall notify the retirement system in writing of his intent to exercise this right under KRS 61.545(3). Upon receipt of the notification, the retirement system shall provide the employee with an estimate of the benefits that may be forfeited by the employee and the "Form 2026, Simultaneous Employment Choice of Systems", necessary for making an election.

(3) If the employee does not complete and return the form, the employee shall participate in both systems simultaneously and his service shall be prorated between the systems based on his ratio of his creditable compensation in each system to his total creditable compensation from all systems.

(4) If the employee submits the completed form, the employer that participates in the system in which the employee rejected participation shall be notified that it shall not report creditable compensation or contributions on the employee for the period of simultaneous employment. If contributions were reported prior to receipt of the form, the employer and employee contributions shall be refunded to the employer and employee and all service credit under that system shall be deleted from the employee's account for the period of simultaneous employment.

Section 5. Pursuant to KRS 61.625, an employee who is not vested for monthly benefits may request a refund of his account by completing and returning a "Form 4525, Application for Refund of Member Contributions and Direct Rollover/Direct Payment Selection". The Kentucky Retirement Systems shall not issue a refund to a member unless the member has terminated employment with his employer.

Section 6. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) ["]Form 2010, "Election or Rejection of Participation", [~~(Rev.~~] 5/98[~~)~~"];

(b) ["]Form 2001, "Membership Information", [~~(Rev.~~] 2/02[~~)~~"];

(c) ["]Form 2035, "Beneficiary Designation", 6/03 [~~(Rev. 3/02)~~"];

(d) ["]Form 2026, "Simultaneous Employment Choice of Systems", [~~(Rev.~~] 5/98[~~)~~"]; and

(e) ["]Form 4525, "Application for Refund of Member Contributions and Direct Rollover/Direct Payment Selection", 5/08 [~~(Rev. 6/02)~~"].

(2) This material may be inspected, copied or obtained, subject to applicable copyright law, from the Kentucky Retirement Systems office at Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky 40601, Monday through Friday, [~~between the hours of~~] 8 a.m. to[~~and~~] 4 30 p m. [~~Monday through Friday~~]

RANDY OVERSTREET, Chair

APPROVED BY AGENCY: May 15, 2008

FILED WITH LRC: June 13, 2008 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 22, 2008, at 9 a.m. at the Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by July 15, 2008, five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by this date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given the opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until July 31, 2008. 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: J. Eric Wampler, Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky 40601, phone (502) 696-8800 ext. 5501, fax (502) 696-8801.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact: J. Eric Wampler

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation provides the procedures for a member of the Kentucky Employees Retirement System (KERS), County Employees Retirement System (CERS), and State Police Retirement System (SPRS) to file information with the Board of Trustees as a condition of membership.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to set out the information required for membership.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 16.530, 61.526, and 61.540 require a member of KERS, CERS, and SPRS to file information with the Board for membership.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation incorporates by reference the forms necessary for a member to complete and file with the Board to participate in KERS, CERS, and SPRS.

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

(a) How the amendment will change this existing administrative regulation: This amendment provides for the revision of the Form 4525, Application for Refund of Member Contributions and Direct Rollover/Direct Payment Selection, to update the tax information for members whose employment terminates and they choose to either take a refund of their accrued contributions and interest or rollover the accrued contributions and interest to another qualified plan.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to provide for the revision of the Form 4525, Application for Refund of Member Contributions and Direct Rollover/Direct Payment Selection, to update the tax information for members whose employment terminates and they choose to either take a refund of their accrued contributions and interest or rollover the accrued contributions and interest to another qualified plan.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 61.625 provides that a member of KERS, CERS, and SPRS may request a refund of contributions after termination of employment. This amendment merely updates the Form 4525, Application for Refund of Member Contributions and Direct Rollover/Direct Payment Selection, to update the tax information for members whose employment terminates and they choose to either take a refund of their accrued contributions and interest or rollover the accrued contributions and interest to another qualified plan.

(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 providing for the revision of the Form 4525, Application for Refund of Member Contributions and Direct Rollover/Direct Payment Selection, to update the tax information for members whose employment terminates and they choose to either take a refund of their accrued contributions and interest or rollover the accrued contributions and interest to another qualified plan.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Members who terminate their employment and seek a refund of accrued contributions and interests or who seek to rollover their accrued contributions and interest.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: They will have to complete the appropriate forms.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no cost.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): They will be able to receive a refund or a rollover of their accrued contributions and interest.

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

(a) Initially: There is no cost to implement this regulation.

(b) On a continuing basis: There is no continuing cost.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Administrative expenses of the retirement system are paid from the Retirement Allowance Account (trust and agency funds).

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

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

(9) TIERING: Is tiering applied? Tiering is not applied. Procedures are the same for all affected individuals.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? No

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

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year?

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years?

(c) How much will it cost to administer this program for the first year?

(d) How much will it cost to administer this program for subsequent years?

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

FINANCE AND ADMINISTRATION CABINET
Kentucky Retirement Systems
(Amendment)

105 KAR 1:180. Death before retirement procedures.

RELATES TO: KRS 16.578, 16.601, 61.640, 78.545

STATUTORY AUTHORITY: KRS 16.578, 61.640, 61.645(9)(g)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 61.645(9)(g) authorizes the Board of Trustees of Kentucky Retirement Systems to promulgate administrative regulations necessary to carry out the provisions of KRS 61.515 to 61.705, 16.510 to 16 652, and 78.520 to 78.852. KRS 61.645(9)(g) authorizes the Board of Trustees of Kentucky Retirement Systems to promulgate all administrative regulations necessary or proper in order to carry out the provisions of KRS 61.515 to 61.705, 16.510 to 16.652, and 78 520 to 78.852. KRS 16.578, 16.601 and 61.640 provide for the payment of certain benefits upon the death of a member prior to retirement. This administrative regulation establishes the procedures for issuance of benefits if death occurs prior to retirement.

Section 1. (1) After learning of the death of a member prior to retirement, the retirement system shall contact the named beneficiary or estate of the deceased member.

(2) The retirement system shall require completion of:

(a) Form 6810, Certification of Beneficiary, if the beneficiary is eligible for monthly payments; or

(b) Form 6825, Refund of Deceased Member's Account, if the beneficiary is eligible only for a refund of the member's account.

Section 2. The following information shall be required before benefits shall be paid:

(1) A copy of the death certificate for the member;

(2) If a beneficiary is deceased, a copy of the death certificate for the beneficiary;

(3)(a) If a beneficiary or dependent child is a minor, a copy of the minor's birth verification, and a Form 6110, Affidavit of Authorization to Receive Funds on Behalf of Minor, If the minor child has a court appointed guardian or conservator and the court appointed guardian or conservator completed the Form 6110, Affidavit of Authorization to Receive Funds on Behalf of Minor, the guardian or conservator shall submit a copy of the court order appointing the guardian or conservator, and

(b) If benefits are payable to dependent children as defined in KRS 16.505(17), the parent or guardian shall provide:

1. A completed Form 6456, Designation of Dependent Child;

2. If applicable, for each child age eighteen (18) years or over, verification of full-time student status, which shall be filed with the retirement office for each semester of study within thirty (30) days following the start and within thirty (30) days following the end of each semester; and

3. If applicable, notice of:

a. The death of a dependent child;

b. The marriage of a dependent child; or

c. A dependent child over the age of eighteen (18) years who ceases to be a full-time student.

(4) If the beneficiary is the surviving spouse of the deceased member and the spouse elects a direct rollover or direct payment

of an actuarial refund, refund of contributions, or sixty (60) months certain option, a Form 6025, Direct Rollover/Direct Payment Election Form for a Member or a Spouse Beneficiary of an Eligible Rollover Distribution;

(5) If the beneficiary is not the surviving spouse of the deceased member and the nonspouse beneficiary elects a direct rollover or direct payment of an actuarial refund, refund of contributions, or sixty (60) months certain option, a Form 6026, Direct Rollover/Direct Payment Election Form for a Non-spouse Beneficiary of an Eligible Rollover Distribution;

(6) If a beneficiary is divorced from the member, a copy of the divorce decree;

(7) If monthly benefits are available to the beneficiary, copies of the birth verifications of the member and the beneficiary; and

(8) If an estate is beneficiary, a copy of the court order appointing the executor, administrator, or personal representative of the estate, or the court order dispensing with formal administration of the estate.

Section 3. If the death certificate shows the cause of death to be homicide or the subject of a pending investigation, the retirement office may require additional evidence relating to the cause of death or investigations and arrests by law enforcement agencies and may delay benefits until the cause of death is fully explained.

Section 4. (1) Upon receipt of the death certificate and other applicable documents, the retirement office shall provide to the beneficiary the monthly payment options available on the Form 6010, Estimated Retirement Allowance.

(2)(a) If multiple beneficiaries are named, the retirement system shall provide the Form 6010, Estimated Retirement Allowance, to the first named beneficiary on the member's beneficiary designation form.

(b) The additional beneficiaries shall be provided a Form 6011, Retirement Monthly Payment Options.

(c) The first named beneficiary shall be responsible for obtaining the signatures of the multiple beneficiaries on the Form 6010, Estimated Retirement Allowance, and returning the completed Form 6010, Estimated Retirement Allowance, to the retirement office.

(d) The multiple beneficiaries shall return all necessary documents, shall select the same payment option, and sign and return the Form 6010, Estimated Retirement Allowance. The Form 6010, Estimated Retirement Allowance, shall be returned to the retirement system before benefit payments commence.

(3) Upon receipt of Form 6825, Refund of Deceased Member's Account, and other applicable beneficiary documents, the retirement system shall process a refund of the member's accumulated contributions and interest to the beneficiary.

(4) If the member died in the same month as the member's effective retirement date but before the first retirement allowance payment has been issued by the State Treasurer, the beneficiary shall also be offered the benefits payable to a beneficiary pursuant to the option the member selected.

Section 5. A payment shall not be made until all information, documents, and forms required by the retirement system are received.

Section 6. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) Form 6810, "Certification of Beneficiary", 5/08[~~7/09~~];

(b) Form 6010, "Estimated Retirement Allowance", 7/04;

(c) Form 6110, "Affidavit of Authorization to Receive Funds on Behalf of Minor", 5/03;

(d) Form 6456, "Designation of Dependent Child", 7/04,

(e) Form 6825, "Refund of Deceased Member's Account", 5/08[~~7/09~~];

(f) Form 6011, "Retirement Monthly Payment Options", 7/02);

(g) Form 6025, "Direct Rollover/Direct Payment Election Form for a Member or a Spouse Beneficiary of an Eligible Rollover Distribution", 5/08[~~5/07~~]; and

(h) Form 6026, "Direct Rollover/Direct Payment Election Form for a Non-Spouse Beneficiary of an Eligible Rollover Distribution", 5/08[~~5/07~~].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

RANDY OVERSTREET, Chair

APPROVED BY AGENCY: May 15, 2008

FILED WITH LRC: June 13, 2008 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD. A public hearing on this administrative regulation shall be held on July 22, 2008, at 9 a.m. at the Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by July 15, 2008, five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by this date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given the opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until July 31, 2008. 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: J. Eric Wampler, Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky 40601, phone (502) 696-8800 ext. 5501, fax (502) 696-8801.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact. J. Eric Wampler

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation provides for procedures for payment of death benefits from the member account upon death of a member prior to retirement.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to set out the procedures for payment of death benefits from the member account upon death of a member prior to retirement.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 16.578, 16.601, 61.640, and 78.545 provide for payment of death benefits from the member account in KERS, CERS, and SPRS upon death of a member prior to retirement.

(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 providing the procedures for payment of death benefits from the member account upon death of a member prior to retirement.

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

(a) How the amendment will change this existing administrative regulation: This amendment provides that a court appointed guardian or conservator shall submit the court order appointing them if they complete and submit the Form 6110, Affidavit of Authorization to Receive Funds on Behalf of Minor, and to update the following forms Form 6810, Certification of Beneficiary, a form requiring the beneficiary of a member account to certify eligibility for a monthly benefit payment from the deceased member account is amended to make it easier to complete. Form 6825, Refund of Deceased Member's Account, a form requiring the beneficiary of a member account to certify eligibility for a refund of the deceased member account is being amended to make it easier to complete Form 6025, Direct Rollover/Direct Payment Election Form for a Member or a Spouse Beneficiary of an Eligible Rollover Distribution a form that provides for a member or spouse beneficiary to either directly receive or rollover lump sum payments to another qualified plan and provides information regarding tax consequences has been

amended to provide additional information regarding tax consequences to a member or spouse beneficiary seeking to either directly receive or rollover a lump sum payment. Form 6026, Direct Rollover/Direct Payment Election Form for a Non-Spouse Beneficiary of an Eligible Rollover Distribution a form that provides for a nonspouse beneficiary to either directly receive or rollover lump sum payments to another qualified plan and provides information regarding tax consequences has been amended to provide additional information regarding tax consequences to a non-spouse beneficiary seeking to either directly receive or rollover a lump sum payment.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to provide that a court appointed guardian or conservator shall submit the court order appointing them if they complete and submit the Form 6110, Affidavit of Authorization to Receive Funds on Behalf of Minor, and to update the following forms: Form 6810, Certification of Beneficiary, a form requiring the beneficiary of a member account to certify eligibility for a monthly benefit payment from the deceased member account is amended to make it easier to complete. Form 6825, Refund of Deceased Member's Account, a form requiring the beneficiary of a member account to certify eligibility for a refund of the deceased member account is being amended to make it easier to complete. Form 6025, Direct Rollover/Direct Payment Election Form for a Member or a Spouse Beneficiary of an Eligible Rollover Distribution a form that provides for a member or spouse beneficiary to either directly receive or rollover lump sum payments to another qualified plan and provides information regarding tax consequences has been amended to provide additional information regarding tax consequences to a member or spouse beneficiary seeking to either directly receive or rollover a lump sum payment. Form 6026, Direct Rollover/Direct Payment Election Form for a Non-Spouse Beneficiary of an Eligible Rollover Distribution a form that provides for a non-spouse beneficiary to either directly receive or rollover lump sum payments to another qualified plan and provides information regarding tax consequences has been amended to provide additional information regarding tax consequences to a non-spouse beneficiary seeking to either directly receive or rollover a lump sum payment.

(c) How the amendment conforms to the content of the authorizing statutes: The authorizing statutes KRS 16.578, 16.601, 61.640, and 78.545 provide for payment of death benefits from the member account in KERS, CERS, and SPRS upon death of a member prior to retirement. This amendment provides that a court appointed guardian or conservator shall submit the court order appointing them if they complete and submit the Form 6110, Affidavit of Authorization to Receive Funds on Behalf of Minor, and to update the following forms:

Form 6810, Certification of Beneficiary, a form requiring the beneficiary of a member account to certify eligibility for a monthly benefit payment from the deceased member account is amended to make it easier to complete. Form 6825, Refund of Deceased Member's Account, a form requiring the beneficiary of a member account to certify eligibility for a refund of the deceased member account is being amended to make it easier to complete. Form 6025, Direct Rollover/Direct Payment Election Form for a Member or a Spouse Beneficiary of an Eligible Rollover Distribution a form that provides for a member or spouse beneficiary to either directly receive or rollover lump sum payments to another qualified plan and provides information regarding tax consequences has been amended to provide additional information regarding tax consequences to a member or spouse beneficiary seeking to either directly receive or rollover a lump sum payment. Form 6026, Direct Rollover/Direct Payment Election Form for a Non-Spouse Beneficiary of an Eligible Rollover Distribution a form that provides for a nonspouse beneficiary to either directly receive or rollover lump sum payments to another qualified plan and provides information regarding tax consequences has been amended to provide additional information regarding tax consequences to a non-spouse beneficiary seeking to either directly receive or rollover a lump sum payment.

(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 providing that a court appointed guardian or conservator shall submit the court order appointing them if they complete and submit the Form 6110, Affidavit of Authorization to Receive Funds on Behalf of Minor, and to update the following forms: Form 6810, Certification of Beneficiary, a form requiring the beneficiary of a member account to certify eligibility for a monthly benefit payment from the deceased member account is amended to make it easier to complete. Form 6825, Refund of Deceased Member's Account, a form requiring the beneficiary of a member account to certify eligibility for a refund of the deceased member account is being amended to make it easier to complete. Form 6025, Direct Rollover/Direct Payment Election Form for a Member or a Spouse Beneficiary of an Eligible Rollover Distribution a form that provides for a member or spouse beneficiary to either directly receive or rollover lump sum payments to another qualified plan and provides information regarding tax consequences has been amended to provide additional information regarding tax consequences to a member or spouse beneficiary seeking to either directly receive or rollover a lump sum payment. Form 6026, Direct Rollover/Direct Payment Election Form for a Non-Spouse Beneficiary of an Eligible Rollover Distribution a form that provides for a non-spouse beneficiary to either directly receive or rollover lump sum payments to another qualified plan and provides information regarding tax consequences has been amended to provide additional information regarding tax consequences to a non-spouse beneficiary seeking to either directly receive or rollover a lump sum payment.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Those individuals or entities affected by this administrative regulation are those beneficiaries named on a member account where the member dies before retirement.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: They will have to complete the appropriate forms and submit a court order.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no cost.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): They will be able to receive the benefits for themselves or on behalf of the minor.

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

(a) Initially: There is no cost to implement this regulation.

(b) On a continuing basis: There is no continuing cost.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Administrative expenses of the retirement system are paid from the Retirement Allowance Account (trust and agency funds).

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

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

(9) TIERING: Is tiering applied? Tiering is not applied. Procedures are the same for all affected individuals.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? No

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

3 Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation.

4. Estimate the effect of this administrative regulation on the

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year?

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years?

(c) How much will it cost to administer this program for the first year?

(d) How much will it cost to administer this program for subsequent years?

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

FINANCE AND ADMINISTRATION CABINET
Kentucky Retirement Systems
(Amendment)

105 KAR 1:200. Retirement procedures and forms.

RELATES TO: KRS 16.576, 16.577, 16.645, 61.590, 61.595, 61.623, 61.702, 61.705, 78.545

STATUTORY AUTHORITY: KRS 61.590(1), 61.645(9)(g)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 61.645(9)(g) authorizes the Board of Trustees of Kentucky Retirement Systems to promulgate administrative regulations necessary or proper in order to carry out the provisions of KRS 61.515 to 61.705, 16.510 to 16.652, and 78.520 to 78.852. KRS 61.590(1) requires that a member or beneficiary eligible to receive retirement benefits have on file at the retirement office each form required by the board. This administrative regulation establishes the procedures and forms for application for and receipt of retirement benefits by members of the Kentucky Retirement Systems.

Section 1. (1)(a) The member shall submit a Form 6000, Notification of Retirement, to the retirement systems no earlier than six (6) months prior to the member's desired effective retirement date.

(b) The member shall provide current information regarding any sick or compensatory leave balances with the Form 6000, Notification of Retirement.

(c) The member shall file a copy of the member's most recent check stub indicating the sick and compensatory leave balances or the member shall submit written verification by the member's employer of the member's sick and compensatory leave balances as of the member's actual or scheduled employment termination date.

(2) The member shall designate the beneficiary of the member's retirement allowance on the Form 6000, Notification of Retirement.

(3) The Form 6000, Notification of Retirement,[;] shall be dated and the member's signature shall be witnessed.

Section 2. (1) The retirement system shall provide an estimate of the member's retirement allowance based on the salary reported to the system and information that may be supplied by the member or the member's employer.

(2) The payment options and amounts available to the member shall be printed on the Form 6010, Estimated Retirement Allowance, and provided to the member with a place to designate the member's choice of payment option.

Section 3. (1)(a) The member shall designate a desired payment option and sign and date the Form 6010, Estimated Retirement Allowance.

(b) The member's signature on the Form 6010, Estimated Retirement Allowance, shall be witnessed and the Form 6010, Estimated Retirement Allowance, returned to the retirement office as required by subsection (2)(c) or (3) of this section.

(2)(a) The member's employment shall be terminated the month before the member's effective retirement date.

(b) The retirement office shall process the first payment in the month following the month in which the completed Form 6010, Estimated Retirement Allowance, and all other applicable forms as provided in this administrative regulation, have been filed at the retirement office.

(c) The Form 6010, Estimated Retirement Allowance, and all other applicable forms as provided in this administrative regulation, shall be filed in the retirement office on the last day of the month preceding the month of the member's effective retirement date.

(3) If the member is retiring pursuant to early retirement provisions, the member shall return the Form 6010, Estimated Retirement Allowance, within six (6) months of the member's retirement date to retain the effective date of retirement shown on the form.

(4)(a) If the member fails to return the Form 6010, Estimated Retirement Allowance, within six (6) months of the member's retirement date, the member's Form 6000, Notification of Retirement, shall be considered void and the member shall be required to submit a new Form 6000, Notification of Retirement.

(b) If a member's Form 6000, Notification of Retirement, is withdrawn, invalid, or voided, the beneficiary or beneficiaries and contingent beneficiary or beneficiaries designated on the last Form 2035, Beneficiary Designation, on file at the retirement office shall remain in full force and effect.

Section 4. (1)(a) The member shall provide the retirement system a copy of the member's birth certificate or other verification of age and, if a survivorship payment option is selected, a copy of the birth certificate or other verification of age of the beneficiary named on the member's Form 6000, Notification of Retirement.

(b) If the member's or beneficiary's name is no longer the same as the name listed on the birth certificate or other verification of age, the systems shall require the member or beneficiary to submit a marriage license, court order, or legally-binding documentation of the name change.

(2) The retirement system shall accept one (1) or more of the following as proof of age of the member or beneficiary:

(a) Age record of the Social Security Administration;

(b) Immigration and naturalization service records;

(c) Baptismal record;

(d) Marriage license;

(e) School record;

(f) Birth certificate;

(g) Military discharge;

(h) U.S. passport; or

(i) Other reliable proof of age that may be used by the courts to verify the person's age.

Section 5. (1)(a) A recipient shall complete a Form 6130, Authorization for Deposit of Retirement Payment, to have the monthly retirement allowance deposited to an account in a financial institution.

(b) The member or financial institution shall provide the information and authorizations required for the electronic transfer of funds from the State Treasurer's Office to the designated financial institution.

(2)(a) At any time while receiving a retirement allowance, the recipient may change the designated institution by completing a new Form 6130, Authorization for Deposit of Retirement Payment and filing the form at the retirement office in Frankfort.

(b) The last Form 6130, Authorization for Deposit of Retirement Payment on file at the retirement office shall control the electronic transfer of the recipient's retirement allowance.

(3) The recipient may complete a Form 6135, Request for Payment by Check, if the recipient does not currently have an account with a financial institution or the recipient's financial institution does not participate in the electronic funds transfer program.

(4) The retirement office shall not process the retirement allowance until the recipient has filed a completed:

(a) Form 6130, Authorization for Deposit of Retirement Payment; or

(b) Form 6135, Request for Payment by Check.

Section 6. (1) The retirement office shall provide a Form 6120, Certification of Service, to the member to certify service with another agency participating in the Kentucky Retirement Systems for which the member may be eligible to purchase credit prior to employment termination.

(2) The retirement office shall, upon request, provide the member with the cost of purchasing the service and an estimate of the benefits attributable to the additional service credit.

Section 7. (1)(a) The retirement office shall provide forms for the selection or waiver of medical insurance coverage for the member, the member's spouse, or the member's dependents pursuant to the group insurance plan upon retirement.

(b) The recipient shall complete the Kentucky Employees Health Plan Health Insurance Application for the Kentucky Retirement Systems or the Form 6200, Kentucky Retirement Systems Medicare Eligible Insurance Enrollment Form.

(2)(a) If the insurance form is received by the last day of the month prior to the month the initial retirement allowance is processed, the insurance coverage shall be effective the first day of the month the recipient becomes eligible for insurance coverage.

(b) If the form is received or if changes are made within thirty (30) days following the first day of the month in which the initial retirement allowance is processed, coverage shall be effective the first day of the month following the month in which the initial retirement allowance is processed.

(3) A recipient who fails to submit a form selecting medical insurance coverage within thirty (30) days following the first day of the month in which the initial retirement allowance is processed shall not be eligible for benefits pursuant to the insurance plan until the following open enrollment period.

Section 8. (1) The retirement office shall provide a Form 6017, Federal Income Tax Withholding Preference for Periodic Payments, to the member to request that federal income taxes be withheld or not withheld from the member's retirement allowance.

(2) If the member is eligible for benefits from the excess benefit plan, the member shall provide the information required by 26 U.S.C. 3402 for purposes of federal income tax withholding from the member's retirement allowance.

Section 9. (1) The retirement office shall provide a Form 6030, Death Benefit Designation, to the member to designate a beneficiary for the death benefit provided by the Kentucky Retirement Systems.

(2) If the member does not file or incorrectly completes a Form 6030, Death Benefit Designation, the member's estate shall become the default beneficiary.

Section 10. (1) The retirement office shall not process a monthly retirement allowance until the member has filed at the retirement office:

(a) A Form 2001, Membership Information;

(b) A properly signed, witnessed, and dated Form 6010, Estimated Retirement Allowance;

(c) A copy of the member's birth verification;

(d) A copy of the birth verification for the beneficiary if selecting a survivorship option; and

(e)1. A completed Form 6130, Authorization for Deposit of Retirement Payment; or

2. A completed Form 6135, Request for Payment by Check; and

(f) A completed Form 6751, "Member and Employer Certification Regarding Reemployment."

(2) The retirement office shall not process a lump sum retirement benefit until:

(a) The member has filed at the retirement office:

1. A Form 2001, Membership Information Form;

2. A properly signed, witnessed, and dated Form 6010, Estimated Retirement Allowance;

3. A Form 6025, Direct Rollover/Direct Payment Election Form for a Member or a Spouse Beneficiary of an Eligible Rollover Distribution; [and]

4. A copy of the member's birth verification; and

5. A completed Form 6751, "Member and Employer Certification Regarding Reemployment"; and

(b) The member's employer has filed at the retirement office proof of the member's employment termination and reported all creditable compensation and accumulated sick leave.

(3) The retirement office shall not process a partial lump sum options retirement benefit until:

(a) The member has filed at the retirement office:

1. A Form 2001, Membership Information Form;

2. A properly signed, witnessed, and dated Form 6010, Estimated Retirement Allowance;

3. A Form 6025, Direct Rollover/Direct Payment Election Form for a Member or a Spouse Beneficiary of an Eligible Rollover Distribution;

4. A copy of the member's birth verification; [and]

5. A copy of the birth verification for the beneficiary if selecting a survivorship option; and

6. A completed Form 6751, "Member and Employer Certification Regarding Reemployment"; and

(b) The recipient has filed a completed:

1. Form 6130, Authorization for Deposit of Retirement Payment; or

2. Form 6135, Request for Payment by Check.

Section 11. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) Form 6000, "Notification of Retirement", July 2004;

(b) Form 6010, "Estimated Retirement Allowance", July 2004,

(c) Form 6130, "Authorization for Deposit of Retirement Payment", May 2008[October 2002];

(d) Form 6120, "Certification of Service", July 2000;

(e) Form 6200, "Kentucky Retirement Systems Medicare Eligible Insurance Enrollment Form", October 2006;

(f) Form 6017, "Federal Income Tax Withholding Preference for Periodic Payments", May 2008[April 2003];

(g) Form 6030, "Death Benefit Designation", May 2008[April 2002];

(h) Form 6135, "Request for Payment by Check", February 2002;

(i) "Kentucky Employees Health Plan Health Insurance Application for the Kentucky Retirement Systems (KRS)"; August[June] 2007;

(j) Form 2001 "Membership Information", February 2002;

(k) Form 2035, "Beneficiary Designation", June 2003, [and]

(l) Form 6025, "Direct Rollover/Direct Payment Election Form for a Member or a Spouse Beneficiary of an Eligible Rollover Distribution", May 2008; and

(m) Form 6751, "Member and Employer Certification Regarding Reemployment," November 2007.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky 40601[-6124], Monday through Friday, 8 a.m. to 4.30 p.m.

RANDY OVERSTREET, Chair

APPROVED BY AGNECY: May 15, 2008

FILED WITH LRC: June 13, 2008 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 22, 2008, at 9 a.m. at the Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by July 15, 2008, five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by this date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given the opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until July 31, 2008. 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: J. Eric Wampler, Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky 40601, phone (502) 696-8800 ext. 5501, fax (502) 696-8801.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person J. Eric Wampler:

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets out the procedures and forms for application for and receipt of retirement benefits by members of the Kentucky Retirement Systems.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to set out the procedures and forms for the application and receipt of retirement benefits by members of the Kentucky Retirement Systems.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 61.590(1) requires a member or beneficiary eligible to receive a benefit have on file at the retirement office each form required by the board.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the statutes by setting out the procedures and forms for the application and receipt of retirement benefits for members and beneficiaries of the Kentucky Retirement Systems.

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

(a) How the amendment will change this existing administrative regulation: The amendment clarifies that the member's signature on the Form 6010, Estimated Retirement Allowance, must be witnessed; permits a member or their financial institution to provide the information and authorizations required for electronic transfer of funds; updates Form 6130, Authorization for Deposit of Retirement Payment, to permit a member or their financial institution to provide the information and authorizations required for electronic transfer of funds; provides that members seeking to retire are required to complete the Form 6751, Member and Employer Certification Regarding Reemployment; updates the Form 6025, Direct Rollover/Direct Payment of Election Form for a Member or a Spouse Beneficiary of an Eligible Rollover Distribution, to clarify that it is to be used by a member or a spouse beneficiary who wish to rollover an eligible distribution; updates the Form 6017 to comply with the IRS Form W-4P for recipients of pensions, annuities, and certain other deferred compensation to tell payers the correct amount of federal income tax to withhold; and clarifies the Form 6030, Death Benefit Designation, to simplify the designation of a death benefit beneficiary.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to clarify that the member's signature on the Form 6010, Estimated Retirement Allowance, must be witnessed; permit the member or their financial institution to provide the information and authorizations required for electronic transfer of funds; update Form 6130, Authorization for Deposit of Retirement Payment, to provide that the member or their financial institution provide the information and authorizations required for electronic transfer of funds; provide that members seeking to retire are required to complete the Form 6751; update the Form 6025 to clarify that it is to be used by a member or a spouse beneficiary who wish to rollover an eligible distribution; updates the Form 6017 to comply with the IRS Form W-4P for recipients of pensions, annuities, and certain other deferred compensation to tell payers the correct amount of federal income tax to withhold; and clarify the Form 6030, Death Benefit Designation, to simplify the designation of a death benefit beneficiary.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes by updating, clarifying, and simplifying the regulatory language and corresponding forms that are required to be on file prior to receiving a retirement benefit, establish the electronic transfer of funds, and designate a death benefit beneficiary.

(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 clarifying the requirements of completing the Form 6010, Estimated Retirement Allowance; permitting the member or their financial institution t provide the necessary information for electronic transfer of funds; updating Form 6130, Authorization for Deposit of Retirement Payment, to permit the member or their financial institution to provide the necessary information for electronic transfer of funds; providing that members seeking to retire are required to complete the Form 6751; clarifying that Form 6025 may be used by a member or a spouse beneficiary who wish to rollover an eligible distribution; updating Form 6017 to comply with the IRS Form W-4P; and clarifying Form 6030 to simplify the designation of a death benefit beneficiary.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All members who will file an application to retire from KERS, CERS, and SPRS who wish to receive a benefit will be required to complete the updated Form 6010; complete the updated Form 6130, complete the updated Form 6017; and retirees who wish to designate or alter their beneficiary designation of Kentucky Retirement Systems Death Benefit will be required to complete the updated Form 6030. All members or spouses who wish to rollover an eligible distribution will be required to complete the updated Form 6025.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The regulated entities identified in question (3) will have to complete the updated forms to receive a benefit, designate a death benefit beneficiary, or rollover an eligible distribution.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no cost.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): There are none.

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

(a) Initially: There is no cost to implement this regulation.

(b) On a continuing basis: There is no continuing cost.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Administrative expenses of the retirement system are paid from the Retirement Allowance Account (trust and agency funds).

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This regulation does not establish any fees nor does it directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Tiering is not applied. Procedures are the same for all affected individuals.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? No

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

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation.

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

(a) How much revenue will this administrative regulation gen-

erate for the state or local government (including cities, counties, fire departments, or school districts) for the first year?

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years?

(c) How much will it cost to administer this program for the first year?

(d) How much will it cost to administer this program for subsequent years?

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

FINANCE AND ADMINISTRATION CABINET
Kentucky Retirement Systems
(Amendment)

105 KAR 1:210. Disability procedures.

RELATES TO: KRS 16.505-16.652, 61.510-61.705, 78.510-78.852, 344.030, 29 C.F.R. Part 1630, 42 U.S.C. 12111(9)

STATUTORY AUTHORITY: KRS 61.645(9)(g)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 61.645(9)(g) authorizes the Board of Trustees of Kentucky Retirement Systems to promulgate all administrative regulations necessary or proper in order to carry out the provisions of KRS 61.515 to 61.705, 16.510 to 16.652, and 78.520 to 78.852. KRS 16.582, 61.600, and 61.665 provide for a process for applying for disability retirement benefits to members of the retirement systems and a process for administrative appeal of a denial of an application or reapplication for disability retirement benefits. This administrative regulation establishes the procedure for filing an application or reapplication for disability retirement benefits and the procedures for filing an administrative appeal of a denial of an application for disability retirement benefits.

Section 1. (1) An application or reapplication for[~~or~~] disability benefits shall be made on "Form 6000, Notification of Retirement".

(2)(a) The application or reapplication shall be filed at the retirement systems within twenty-four (24) months, which is 730 calendar days, of the applicant's last day of paid employment in a regular full-time position.

(b) The time period for filing an application or reapplication for disability retirement benefits shall begin on the day after the applicant's last day of paid employment in the regular full-time position and shall end at close of business on the following 730th day.

(c) If the last day of the period is a Saturday, Sunday, or state or federal holiday, then the application shall be valid if filed at the retirement systems by the close of the next business day following the weekend or holiday.

(d) The applicant's employer shall certify the applicant's last day of paid employment.

(e) An application or reapplication may be submitted prior to the applicant's last day of paid employment.

Section 2. (1) If the applicant is eligible to begin drawing early retirement benefits, the applicant shall be notified of the right to receive a retirement allowance while the disability application is being processed.

(2) Election of early retirement by the applicant shall not affect the application for disability retirement.

Section 3. (1) The applicant shall complete and submit to the retirement systems a "Form 8035, Employee's Job Description". The applicant's employer shall complete and submit to the retirement systems a "Form 8030, Employer's Job Description". Both the applicant and the employer shall provide information regarding applicant's request for reasonable accommodations and the reasonable accommodations available to applicant, whether or not the applicant actually accepted the reasonable accommodations.

(2) The retirement systems may require additional details from the applicant and the applicant's employer regarding the applicant's job duties, if necessary.

Section 4. (1) When the retirement systems requires an applicant to submit to a medical or psychological examination under KRS 61.665(2)(i) or 61.665(3)(c), the retirement systems shall reimburse the applicant for mileage from the applicant's home address as it is on file at the retirement systems, to the place of the examination or evaluation, and returning to the applicant's home address on file at the retirement systems. The applicant shall be reimbursed for the most direct and usually traveled routes.

(2) Mileage shall be based on the "Kentucky Official Highway Map", mileage software, or the most recent edition of the "Rand McNally Road Atlas." The applicant shall complete and submit a Form 8846, Independent Examination Travel Voucher indicating the mileage the applicant traveled from the applicant's home address as it is on file at the retirement systems, to the place of the examination or evaluation, and returning to the applicant's home address on file at the retirement systems. Applicant shall use the most direct and usually traveled routes.

(3) The mileage certified by the applicant shall not be greater than the mileage indicated by the "Kentucky Official Highway Map", mileage software, or the most recent edition of the "Rand McNally Road Atlas" for the most direct and usually traveled route from applicant's home address as it is on file at the retirement systems, to the place of the examination or evaluation, and returning to the applicant's home address on file at the retirement systems. If the mileage certified by the applicant is greater than the mileage indicated by the "Kentucky Official Highway Map", mileage software, or the most recent edition of the "Rand McNally Road Atlas" the retirement systems shall pay the applicant the mileage indicated by the "Kentucky Official Highway Map", mileage software, or the most recent edition of the "Rand McNally Road Atlas".

(4) Reimbursement for use of a privately owned vehicle shall be made at the IRS established standard mileage rate which changes periodically; and shall not exceed the cost of commercial coach fare.

(5) Actual costs for parking shall be reimbursed upon submission of receipts. Applicant shall submit the originals of the parking receipts along with a written request for reimbursement.

(6) Actually bridge and highway toll charges shall be reimbursed if the bridge or highway is on the most direct and usually traveled route. Applicant shall submit the originals of the bridge and highway toll receipts along with a written request for reimbursement.

(7) Applicant shall file at the retirement office a completed Form 8846, Independent Examination Travel Voucher, within fifteen (15) days of the date of the examination or evaluation in order to receive reimbursement for travel expenses.[~~The provisions of this section shall only apply to applicants who filed an application for disability retirement benefits on or before July 12, 2004.~~

~~(2) The applicant shall request his medical records from the physicians or medical facilities who have treated or evaluated the applicant. Payment for copies of medical records shall be the responsibility of the applicant.~~

~~(3) The applicant's physicians or medical facilities shall submit copies of all medical records, test results or other information concerning the applicant to the retirement systems.~~

~~(4) The applicant or his physicians may submit a current listing of the applicant's prescription medications.~~

~~(5) Statements by the physicians shall not be considered medical evidence unless accompanied by documented medical records or test results.~~

~~(6) The retirement systems shall pay a reasonable fee, not to exceed fifty (50) dollars, for a "Form 8045, Physician's Summary Report", to be completed by the applicant's physician. The applicant shall be responsible for any amount in excess of fifty (50) dollars.~~

~~(7) When both the Form 8030, Employer's Job Description, and the Form 8035, Employee's Job Description, and medical information from all, but a minimum of two (2), physicians or medical facilities that have treated or examined the applicant have been received, the information shall be submitted to the medical examin-~~

~~ers.~~

~~(8) The time limits in KRS 61.665 for the applicant's actions in response to a denial, reduction or discontinuance of benefits shall be counted beginning on the day following receipt of notice by the applicant from the retirement systems.~~

~~(9) The time limits shall continue until the close of business on the day the applicant files the necessary action with the retirement systems or the day the time period ends.~~

~~(10) The period shall continue until the applicant receives written notice from the retirement systems of further denial.~~

~~(11) The period to request a formal hearing shall not exceed the cumulative extension of time specified in KRS 61.665(2)(g).~~

~~(12) If the periods allowed under the statute have been exhausted, the applicant shall have no further right to appeal to the hearing officer.~~

~~(13) The applicant shall make a request for a formal hearing in writing.~~

~~(14) If the applicant is unable to attend or desires to reschedule a formal hearing~~

~~(a) The applicant shall send the retirement systems a request in writing prior to the date of the hearing; and~~

~~(b) The hearing officer may reschedule the hearing upon a finding of good cause.~~

~~(15)(a) The hearing officer may request a prehearing conference or may consider new medical evidence not already part of the applicant's retirement file.~~

~~(b) The prehearing conference shall be an informal procedure, presided over by the hearing officer.~~

~~(c) Every effort shall be made by the parties to dispose of controversies, to narrow and define issues and to facilitate prompt resolution of the claim.~~

~~(16) If, at the conclusion of the prehearing conference, the parties have not reached an agreement on the issues, the hearing officer shall schedule a hearing to be held within sixty (60) days after the date of the prehearing conference, unless the applicant agrees to a longer period of time.~~

~~(17)(a) If the parties agree upon a resolution after the prehearing conference but before the hearing, the resolution agreement shall be filed with the hearing officer.~~

~~(b) The hearing shall be cancelled and notice of the cancellation shall be served on the parties.~~]

Section 5. The applicant shall provide to the retirement system information concerning his continuing status with regard to receipt of Workers' Compensation and Social Security disability benefits.

Section 6. [~~(1) The provisions of this section shall apply to applicants who file their application or reapplication for disability retirement benefits at the retirement systems on or after July 13, 2004.~~]

(1)[~~(2)~~] The applicant shall complete and submit a "Form 8001, Certification of Application for Disability Retirement and Supporting Medical Information." The applicant shall attach all medical information, forms, and other information for review by the medical examiners to the "Form 8001, Certification of Application for Disability Retirement and Supporting Medical Information."

(2)[~~(3)~~] The retirement systems shall submit the completed "Form 8001, Certification of Application for Disability Retirement and Supporting Medical Information" and all the attached information to the medical examiners upon receipt by the retirement systems.

(3)[~~(4)~~] The time periods prescribed in KRS 61.600 and 61.665 shall begin on the day the notification of the recommendation of the medical examiners is mailed by the retirement systems and shall end at close of business on the last day of the prescribed time period.

(4)[~~(5)~~] If the last day of the period is a Saturday, Sunday, or state or federal holiday, then the application shall be valid if filed at the retirement systems by the close of the next business day following the weekend or holiday.

(5)[~~(6)~~] An applicant's request for a formal hearing shall be made in writing.

(6)[~~(7)~~] Statements by the physicians shall not be considered medical evidence unless accompanied by documented medical records or test results.

Section 7. (1) The medical examiner may contact the applicant or the applicant's physicians to request additional medical evidence as necessary.

Section 8. (1) The hearing officer may allow the applicant to introduce, among other evidence, the determination of Workers' Compensation or Social Security Administration awarding disability benefits to the applicant.

(2) The hearing officer shall consider only objective medical records contained within the determination and shall not consider vocational factors or be bound by factual or legal findings of other state or federal agencies.

Section 9. (1) The provisions of this section shall only apply to a member who began participating on or before July 31, 2004.

(2) If an application for disability is approved, the applicant's disability benefit shall be paid retroactive to the month following the month of the applicant's last day of paid employment.

(3) The service added for determining the disability retirement allowance shall be determined under KRS 16.582 if the applicant's last day of paid employment was in a hazardous position, or under KRS 61.605 if the applicant's last day of paid employment was in a nonhazardous position.

(4) If the applicant has both hazardous and nonhazardous service in the same system, the added service shall be prorated between hazardous and nonhazardous service based on the proportion of service in each position to the whole, except that all of the added service shall be applied toward the nonhazardous retirement allowance if:

(a) The applicant is disabled from a hazardous position as a result of an act in line of duty; and

(b) Twenty-five (25) percent of the applicant's final rate of pay is greater than the hazardous disability retirement allowance determined using the prorated added service.

(5) If the applicant has service in more than one (1) system administered by the Kentucky Retirement Systems, the added service shall be prorated between the systems based on the proportion of service in each system to the whole, except if the applicant is disabled from a hazardous position in one (1) system as a result of an act in line of duty and twenty-five (25) percent of the applicant's final rate of pay is greater than the hazardous disability retirement allowance determined using the prorated added service:

(a) All of the added service shall be applied toward the nonhazardous retirement system if the applicant is vested for disability benefits from the nonhazardous system.

(b) All of the added service shall be applied toward the hazardous retirement system if the applicant is not vested for disability benefits from the nonhazardous system.

Section 10. (1) If the applicant who is awarded disability retirement benefits did not receive early retirement benefits, upon the applicant's selection of a payment option, the retirement systems shall pay the applicant the total monthly retirement allowances payable from the effective date of disability retirement.

(2) (a) If the applicant received early retirement benefits, the retirement systems shall calculate and pay to the applicant the difference between the early retirement benefit which was paid to the applicant and the disability benefit.

(b) The applicant shall not change his payment option.

(3) If benefits are payable to dependent children, as defined in KRS 16.505(17), the parent or guardian shall provide:

(a) A completed Form 6456, Designation of Dependent Child;

(b) A verification of full-time student status of a child age eighteen (18) or over;

(c) A copy of the birth certificate of each dependent child;

(d) If a dependent child is a minor, a Form 6110, Affidavit of Authorization to Receive Funds on Behalf of Minor. If the minor child has a court appointed guardian or conservator and the court appointed guardian or conservator completed the Form 6110, Affidavit of Authorization to Receive Funds on Behalf of Minor, the guardian or conservator shall submit a copy of the court order appointing the guardian or conservator; and

(e) Notice of the death or marriage of a dependent child, or if the dependent child ceases to be a full-time student.

(f) A copy of the dependent child's verification of full-time student status shall be filed with the retirement system for each semester of study within thirty (30) days following the start and within thirty (30) days following the end of each semester.

(4) An increase provided to recipients under KRS 61.691 shall be applied to the applicant's disability benefit and payments to dependent children in determining the total retroactive payments owed to the applicant and dependent children.

Section 11. (1) The applicant shall notify the retirement systems of his intent to apply for workers' compensation or benefits from the Social Security Administration. Upon receipt of approval for workers' compensation or benefits from the Social Security Administration, the applicant shall file at the retirement systems a copy of the approval notice containing the amount of the award.

(2) To determine the maximum benefit under KRS 61.607, the following shall be added together:

(a) The applicant's gross monthly disability retirement allowance determined in accordance with KRS 61.605 or 16.582, excluding payments to dependent children and before any actuarial reduction for purposes of an optional retirement plan under KRS 61.635 or 16.576, converted to an annual amount.

(b) The applicant's total gross annual benefit from workers' compensation. If the applicant's benefit includes a lump sum payment or a payment for a period less than the applicant's lifetime, then an annualized benefit shall be determined as follows:

1. The gross amount of any lump sum payment shall be divided by the applicant's life expectancy, expressed in years, from the effective date of the award.

2. The total gross amount of all payments paid for any period other than the applicant's lifetime shall be divided by the applicant's life expectancy, expressed in years, from the effective date of the award.

3. The total determined in subparagraphs 1 and 2 of this paragraph shall be combined and added to the total gross annual amount of the applicant's lifetime benefit, if any.

(c) The applicant's gross monthly disability benefit from the Social Security Administration, excluding spouse or dependent benefits converted to an annual amount

(3) If the projected combined monthly benefit exceeds 100 percent of the disabled employee's final rate of pay or final compensation, whichever is greater, the disability retirement allowance from the retirement system shall be reduced as follows:

(a) The difference shall be divided by twelve (12) and subtracted from the applicant's monthly retirement allowance determined in accordance with KRS 61.605 or 16.582, excluding payments to dependent children and before any actuarial reduction for purposes of an optional retirement plan under KRS 61.635 or 16.576.

(b) The actuarial reduction for the applicant's optional plan under KRS 61.635 or 16.576 shall be applied to determine the applicant's monthly retirement allowance. The reduction shall apply to all retirement allowances received since the date the combined benefits exceeded 100 percent of the higher of the applicant's final compensation or final rate of pay based on the effective dates of the individual benefits.

(4) The disability retirement allowance payable shall not be reduced below an amount which would result from a computation of retirement allowance under early retirement or the disability retirement allowance from the retirement system using the disabled employee's actual total service, whichever is greater.

Section 12. (1) A recipient shall complete a Form 6130, Authorization for Deposit of Retirement Payment, to have the monthly retirement allowance deposited to an account in a financial institution.

(2) The recipient and the financial institution shall provide the information and authorizations required for the electronic transfer of funds from the State Treasurer's office to the designated financial institution.

(3)(a) At any time while receiving a retirement allowance, the recipient may change the designated institution by completing a new Form 6130, Authorization for Deposit of Retirement Payment, and filing the form at the retirement systems.

(b) The last Form 6130, Authorization for Deposit of Retirement Payment on file at the retirement systems shall control the electronic transfer of the recipient's retirement allowance.

(4) The recipient may complete a Form 6135, Request for Payment by Check.

(5) The retirement systems shall not process the retirement allowance until the recipient has filed a completed Form 6130, Authorization for Deposit of Retirement Payment or filed a completed Form 6135, Request for Payment by Check.

Section 13. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) ["]Form 6000, "Notification of Retirement," July 2004[", Kentucky Retirement Systems];

(b) ["]Form 8030, "Employer's Job Description," July 2004[", Kentucky Retirement Systems],

(c) [~~"Form 8045, Physician's Summary Report, July 2001", Kentucky Retirement Systems;~~

~~(d) "~~]Form 8035, "Employee's Job Description," July 2004[~~", Kentucky Retirement Systems~~];

(d)[~~(e) "~~]Form 6110, "Affidavit of Authorization to Receive Funds on Behalf of Minor" May 2003 [~~", Kentucky Retirement Systems~~];

(e)[~~(f) "~~]Form 6456, "Designation of Dependent Child," July 2004[~~", Kentucky Retirement Systems~~];

(f)[~~(g) "~~]Form 6130, Authorization for Deposit of Retirement Payment," May 2008 [~~October 2002," Kentucky Retirement Systems~~];

(g)[~~(h) "~~]Form 6135, "Request for Payment by Check," February 2002,[~~" Kentucky Retirement Systems~~];[~~and~~]

(h)[~~(i) "~~]Form 8001, "Certification of Application for Disability Retirement and Supporting Medical Information," May 2008; and

(i) Form 8846, "Independent Examination Travel Voucher", May 2008 [~~July 2004", Kentucky Retirement Systems~~].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky 40601[~~-6124~~], Monday through Friday, 8 a.m. to 4:30 p.m.

RANDY OVERSTREET, Chair

APPROVED BY AGENCY: May 15, 2008

FILED WITH LRC: June 13, 2008 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 22, 2008, at 9 a.m. at the Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by July 15, 2008, five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by this date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given the opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until July 31, 2008. 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: J. Eric Wampler, Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky 40601, phone (502) 696-8800 ext. 5501, fax (502) 696-8801.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact: J. Eric Wampler

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation provides the procedures for applying for disability retirement benefits to members of the retirement systems and a

process for applying for administrative appeal of a denial of an application or reapplication for disability retirement benefits in accordance with KRS 16.582, 61.600, and 61.665.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to provide the procedures for applying for disability retirement benefits to members of the retirement systems and a process for applying for administrative appeal of a denial of an application or reapplication for disability retirement benefits in accordance with KRS 16.582, 61.600, and 61.665.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by providing procedures for applying for disability retirement benefits to members of the retirement systems and a process for applying for administrative appeal of a denial of an application or reapplication for disability retirement benefits in accordance with KRS 16.582, 61.600, and 61.665

(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 providing the procedures for applying for disability retirement benefits to members of the retirement systems and a process for applying for administrative appeal of a denial of an application or reapplication for disability retirement benefits in accordance with KRS 16.582, 61.600, and 61.665.

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

(a) How the amendment will change this existing administrative regulation: This amendment provides the procedure and forms for Kentucky Retirement Systems to reimburse a disability applicant for mileage, parking, and toll charges when the retirement systems requires the recipient to submit to an independent medical or psychological examination pursuant to KRS 61.665(j); incorporates by reference Form 8846 required to reimburse a disability applicant for mileage, parking, and toll charges when the retirement systems requires the recipient to submit to an independent medical or psychological examination pursuant to KRS 61.6665(j); requires court appointed guardians or conservators, who have completed the Form 6110 on behalf of their minor ward, to submit a copy of the court order appointing the guardian or conservator; and incorporates by reference an updated Form 8001, Certification of Application for Disability Retirement and Supporting Medical Information, to allow the submission of the form and medical documentation without requiring the signature of a notary.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to provide for the procedures and forms for Kentucky Retirement Systems to reimburse a disability applicant for mileage, parking, and toll charges when the retirement systems requires the recipient to submit to an independent medical or psychological examination pursuant to KRS 61.665(j); incorporates by reference Form 8846 required to reimburse a disability applicant for mileage, parking, and toll charges when the retirement systems requires the recipient to submit to an independent medical or psychological examination pursuant to KRS 61.6665(j); requires court appointed guardians or conservators who have completed the Form 6110 on behalf of their minor ward to submit a copy of the court order appointing them guardian or conservator; and incorporates by reference an updated Form 8001, Certification of Application for Disability Retirement and Supporting Medical Information, to allow the submission of the form and medical documentation without requiring the signature of a notary.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes by providing the procedures and forms to reimburse a disability applicant for mileage, parking, and toll charges when the retirement systems requires the recipient to submit to an independent medical or psychological examination in accordance with KRS 16.582, 61.600, and 61.665, clarifies procedures for guardian or conservators to collect benefits on behalf of their minor ward; and relaxes requirements regarding the notary requirements on Form 8001, Certification of Application for Disability Retirement and Supporting Medical Information.

(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 providing the procedures and forms to reimburse a disability applicant for mileage, parking, and toll charges when the retirement systems requires the recipient to submit to an independent medical or psychological examination in accordance with KRS 16.582, 61.600, and 61.665; clarifies procedures for guardian or conservators to collect benefits on behalf of their minor ward; and relaxes requirements regarding the notary requirements on Form 8001, Certification of Application for Disability Retirement and Supporting Medical Information.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Those individuals or entities affected by this administrative regulation are members of Kentucky Retirement Systems who are required to submit to an independent medical examination as a result of their application for disability benefits; applicants for disability benefits who submit a Form 8001, Certification of Application for Disability Retirement and Supporting Medical Information; and court appointed guardians or conservators who have completed the Form 6110 on behalf of their minor ward.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Disability applicants who are required to submit to an independent medical examination will have comply with the procedures and complete the appropriate forms to receive reimbursement for travel expenses, and court appointed guardians or conservators who have completed the Form 6110 on behalf of their minor ward will have to submit a copy of the court order appointing them guardian or conservator.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no cost.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): They will be reimbursed travel expenses if required to submit to an independent medical examination in accordance with KRS 16.582, 61.600, and 61.665; disability applicants who submit a Form 8001, Certification of Application for Disability Retirement and Supporting Medical Information; will not be required to have the form notarized; and court appointed guardians or conservators who have completed the Form 6110 and submitted the court order appointing them guardian or conservator will be eligible to collect benefits on behalf of their minor ward.

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

(a) Initially: There is no cost to implement this regulation.

(b) On a continuing basis: There is no continuing cost.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Administrative expenses of the retirement system are paid from the Retirement Allowance Account (trust and agency funds).

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

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

(9) TIERING: Is tiering applied? Tiering is not applied. Procedures are the same for all affected individuals.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? No

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

3. Identify each state or federal statute or federal regulation

that requires or authorizes the action taken by the administrative regulation.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year?

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years?

(c) How much will it cost to administer this program for the first year?

(d) How much will it cost to administer this program for subsequent years?

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

Revenues (+/-):
Expenditures (+/-):
Other Explanation:

FINANCE AND ADMINISTRATION CABINET
Kentucky Retirement Systems
(Amendment)

105 KAR 1:220. Annual disability review.

RELATES TO: KRS 16 645, 61.610, 61.615, 61.665, 78.545
STATUTORY AUTHORITY: KRS 61.645(9)(g)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 61 645(9)(g) authorizes the Board of Trustees of Kentucky Retirement Systems to promulgate all administrative regulations necessary or proper in order to carry out the provisions of KRS 61.515 to 61.705, 16.510 to 16.652, and 78.520 to 78.852. KRS 61.610 and 61.615 provide for the employment and medical staff review of a recipient of a disability retirement allowance to determine if the recipient's disability retirement allowance should be continued or discontinued. This administrative regulation establishes the process for employment and medical staff reviews.

Section 1. (1) [~~The provisions of this section shall only apply to recipients who were notified by the retirement systems of their employment and medical staff review on or before July 12, 2004 and whose employment and medical staff review was in progress on or before July 12, 2004.~~

~~(a) A recipient of a disability retirement allowance shall be required to undergo a medical examination and financial review. The medical examination may include.~~

~~1. A review by the medical examiners of medical records or other information regarding any examination, evaluation, treatment, hospitalization, and outpatient care for the disability,~~

~~2. A medical examination by the medical examiners, or~~

~~3. An independent medical examination.~~

~~(b) The recipient shall complete and return a "Form 8100, Annual Disability Certification" to the retirement systems requesting employment and financial information and authorization from the recipient to release medical records or other information regarding any examination, evaluation, treatment, hospitalization, and outpatient care for the disability which are necessary to complete the medical examinations and financial reviews. A recipient's failure to return a completed "Form 8100, Annual Disability Certification", or other requests for medical, employment, and financial information shall constitute a refusal to submit to a medical and financial review and shall be the basis to discontinue the recipient's retirement allowance pursuant to KRS 61.610(1).~~

~~(c) The recipient shall file with the retirement systems the names of the physicians, medical facilities, and other health care providers that treated or examined the recipient for the incapacity for which the recipient receives a disability retirement allowance.~~

~~(d) The retirement systems shall request the recipient's medical records or other information authorized in accordance with paragraph (b) of this subsection from the recipient's physicians, medical facilities, and other health care providers. The medical records or other information shall be submitted to the medical examiners for review utilizing the procedures consistent with KRS 61.665.~~

~~(2)(a) The recipient shall file a written notice with the retirement systems immediately upon employment in any capacity. The recipient shall identify the employer and include a written statement from the employer of a detailed list of the duties of the new position.~~

~~(b) The medical examiners shall review the duties of the position in which the recipient is employed by utilizing the procedures consistent with KRS 61.665 and recommend to the retirement systems if the employment constitutes a change in the recipient's disability status.~~

~~(3)(a) The retirement systems shall notify the recipient of the recommendation of the medical examiners. If the medical examiners recommend that disability benefits be discontinued, the recipient shall be notified of the procedures for filing additional medical records or other information regarding the disability, or for filing a request for a formal hearing, by utilizing the procedures consistent with KRS 61.665.~~

~~(b) If the medical examiners recommend that disability benefits be discontinued, the retirement systems shall notify the recipient of the recommendation. The recipient shall have sixty (60) days from the date of notification to file at the retirement systems additional medical records or other information regarding the disability or to appeal the recommendation to discontinue disability benefits by filing at the retirement systems a written request for an administrative hearing. An extension of time may be granted by the retirement systems for the recipient's filing of additional medical records or other information for reconsideration by the medical examiners. Pursuant to KRS 61.665(2)(g), the extensions of time shall not be for more than sixty (60) days for any one (1) extension, and the retirement systems shall not grant more than three (3) extensions. The cumulative extension of time shall not exceed 120 days. The extensions of time shall end upon written request of an administrative hearing.~~

~~(c) A recipient may file at the retirement systems a written request for an administrative hearing. The hearing shall be conducted by a hearing officer in accordance with KRS Chapter 13B. The written request for an administrative hearing shall be filed with the executive director at the retirement systems office in Frankfort. The request for a hearing shall include a short and plain statement for the basis of contesting the recommendation to discontinue disability benefits.~~

~~(d) The right to request a hearing shall be limited to a period of sixty (60) days, as described in paragraph (b) of this subsection, after the recipient has had notice of the medical examiners recommendation to discontinue disability benefits. If any extensions of time are granted by the retirement systems for the right to request a hearing, the extensions shall be as provided for in paragraph (b) of this subsection.~~

~~(e) Failure of the recipient to file additional medical records or other information regarding the disability or to request an administrative hearing within the time limits specified in paragraphs (b) and (d) of this subsection shall preclude the recipient from proceeding any further with the appeal of the recommendation to discontinue disability benefits, and the recipient's disability benefits shall be discontinued the next month after the expiration of the time limits.~~

~~(f) At the conclusion of the administrative appeal, the hearing officer shall file a recommended order with the board. The board shall issue a final order to continue or discontinue the recipient's disability benefits. A final order of the board to discontinue the recipient's disability benefits shall take effect the next month after the board issues a final order.~~

~~(g) Any person aggrieved by a final order of the board may seek judicial review, pursuant to KRS 61.665(5) and 13B.140.~~

~~Section 2. (1) The provisions of this section shall apply to recipients who receive notice from the retirement systems of their employment and medical staff review on or after July 13, 2004.~~

~~(2)~~] The review form prescribed by the board to be completed and filed by the recipient at the retirement office in accordance with

KRS 61.610 is the "Form 8101, Employment and Medical Staff Review Certification".

(a) The time periods prescribed in KRS 61.610 and 61.615 shall begin on the day the "Form 8101, Employment and Medical Staff Review Certification" or the notification of the recommendation of the medical examiners is mailed and shall end at close of business on the last day of the prescribed time period.

(b) If the last day of the time period is a Saturday, Sunday or state or federal holiday, then the application shall be valid if filed at the retirement systems by the close of the next business day following the weekend or holiday.

(2)[~~(3)~~] The recipient shall file a written notice with the retirement systems immediately upon beginning employment in any capacity. The recipient shall identify the employer and include a written statement from the employer of a detailed list of the duties of the new position.

Section 2. (1) When the retirement systems requires a recipient to submit to a medical or psychological examination under KRS 61.615(3)(h), the retirement systems shall reimburse the recipient for mileage from the recipient's home address as it is on file at the retirement systems, to the place of the examination or evaluation, and returning to the recipient's home address on file at the retirement systems. The recipient shall be reimbursed for the most direct and usually traveled routes.

(2) Mileage shall be based on the "Kentucky Official Highway Map", mileage software, or the most recent edition of the "Rand McNally Road Atlas". The recipient shall complete and submit a Form 8846, Independent Examination Travel Voucher indicating the mileage the recipient traveled from the recipient's home address as it is on file at the retirement systems, to the place of the examination or evaluation, and returning to the recipient's home address on file at the retirement systems. Recipient shall use the most direct and usually traveled routes.

(3) The mileage certified by the recipient shall not be greater than the mileage indicated by the "Kentucky Official Highway Map", mileage software, or the most recent edition of the "Rand McNally Road Atlas" for the most direct and usually traveled route from recipient's home address as it is on file at the retirement systems, to the place of the examination or evaluation, and returning to the recipient's home address on file at the retirement systems. If the mileage certified by the recipient is greater than the mileage indicated by the "Kentucky Official Highway Map", mileage software, or the most recent edition of the "Rand McNally Road Atlas" the retirement systems shall pay the recipient the mileage indicated by the "Kentucky Official Highway Map", mileage software, or the most recent edition of the "Rand McNally Road Atlas".

(4) Reimbursement for use of a privately owned vehicle shall be made at the IRS established standard mileage rate which changes periodically; and shall not exceed the cost of commercial coach fare.

(5) Actual costs for parking shall be reimbursed upon submission of receipts. Recipient shall submit the originals of the parking receipts along with a written request for reimbursement.

(6) Actual bridge and highway toll charges shall be reimbursed if the bridge or highway is on the most direct and usually traveled route. Recipient shall submit the originals of the bridge and highway toll receipts along with a written request for reimbursement.

(7) Recipient shall file at the retirement office a completed Form 8846, Independent Examination Travel Voucher, within fifteen (15) days of the date of the examination or evaluation in order to receive reimbursement for travel expenses.

Section 3. The retirement systems may request financial information from other state or federal agencies to determine if a recipient is receiving income or employed in a new position.

Section 4. The retirement systems may not require a medical review if the recipient's disability status is reviewed by the Kentucky Teachers' Retirement System.

Section 5. Incorporation by Reference. (1) The following material is incorporated by reference:

(a)[~~(1) "Form 8100, Annual Disability Certification, November 2002 and~~

~~(2) "~~]Form 8101, "Employment and Medical Staff Review Certification", May 2008,[~~July 2004",~~]

(b) Form 8846, "Kentucky Retirement Systems Travel Voucher for Independent Examination", May 2008.

(3) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky 40601[~~-6124~~], Monday through Friday, 8 a.m. to 4:30 p.m.

RANDY OVERSTREET, Chair

APPROVED BY AGENCY: May 15, 2008

FILED WITH LRC: June 13, 2008 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 22, 2008, at 9 a.m. at the Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by July 15, 2008, five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by this date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given the opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until July 31, 2008. 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: J. Eric Wampler, Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky 40601, phone (502) 696-8800 ext. 5501, fax (502) 696-8801.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person J. Eric Wampler:

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets out the procedures and forms for employment and medical staff disability reviews for recipients of disability retirement benefits from Kentucky Retirement Systems.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to set out the procedures and forms for annual disability review for recipients of disability retirement benefits from Kentucky Retirement Systems.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation sets out the specific procedures to implement KRS 61.610 and 61.615 which require a member on a disability retirement allowance to undergo an employment and medical staff review not less than once every five years.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the statutes by setting out the procedures and forms for employment and medical staff review for recipients of disability retirement benefits from Kentucky Retirement Systems.

(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 provides the procedures and forms for Kentucky Retirement Systems to reimburse a disability recipient for mileage, parking, and toll charges when the retirement systems requires the recipient to submit to an independent medical or psychological examination pursuant to KRS 61.615(3)(h); incorporates by reference Form 8846 required to reimburse a disability applicant for mileage, parking, and toll charges when the retirement systems requires the recipient to submit to an independent medical or psychological examination pursuant to KRS 61.615(3)(h); and updates the Form 8101, Employment and Medical Staff Review Certification, to allow the submission of the form and medical documenta-

tion without requiring the signature of a notary as well as requiring that a job description be attached to the form if the member has been employed since they were approved for disability benefits or their most recent employment and medical staff review.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to establish the procedure and forms for Kentucky Retirement Systems to reimburse a disability recipient for mileage, parking, and toll charges when the retirement systems requires the recipient to submit to an independent medical or psychological examination pursuant to KRS 61.615(3)(h); and to updates the Form 8101, Employment and Medical Staff Review Certification, to allow the submission of the form and medical documentation without requiring the signature of a notary as well as requiring that a job description be attached to the form if the member has been employed since they were approved for disability benefits or their most recent employment and medical staff review.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes by establishing procedures and forms necessary for Kentucky Retirement Systems to reimburse disability benefit recipients for mileage, parking, and toll charges when the retirement systems requires the recipient to submit to an independent medical or psychological examination pursuant to KRS 61.615(3)(h); and makes changes to a form required to be submitted during employment and medical staff review process by eliminating the requirement that the disability recipient's signature be notarized to allow the submission of the form and medical documentation without requiring the signature of a notary as well as requiring that a job description be attached to the form if the member has been employed since they were approved for disability benefits or their most recent employment and medical staff review.

(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 establishing procedures and forms which further Kentucky Retirement Systems obligation to implement its authority under KRS 61.610 and 61.615.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All recipients of disability retirement benefits from Kentucky Retirement Systems who are required to undergo employment and medical staff review.

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

(a) List the actions that each of the regulated entities identified in question (3): All recipients of disability retirement benefits from Kentucky Retirement Systems who are required to undergo employment and medical staff review will have to comply with this administrative regulation. They will have to complete the updated Form 8101, Employment and Medical Staff Review Certification, as well as submit a job description if the member has been employed since they were approved for disability benefits or their most recent employment and medical staff review; and they may apply for reimbursement for mileage, parking, and toll charges when the retirement systems requires the recipient to submit to an independent medical or psychological examination pursuant to KRS 61.615(3)(h).

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no cost.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): There are none.

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

(a) Initially: There is no cost to implement this regulation.

(b) On a continuing basis: There is no continuing cost.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Administrative expenses of the retirement system are paid from the Retirement Allowance Account (trust and agency funds).

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This regulation does not establish any fees nor does it directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Tiering is not applied. Procedures are the same for all affected individuals.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? No

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

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year?

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years?

(c) How much will it cost to administer this program for the first year?

(d) How much will it cost to administer this program for subsequent years?

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

FINANCE AND ADMINISTRATION CABINET
Kentucky Retirement Systems
(Amendment)

105 KAR 1:240. Death after retirement procedures.

RELATES TO: KRS 16.645(10), (30), 61.623, 61.630, 78.545(16), (41)

STATUTORY AUTHORITY: KRS 61.645(9)(g)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 61.645(9)(g) authorizes the Board of Trustees of Kentucky Retirement Systems to promulgate all administrative regulations necessary or proper in order to carry out the provisions of KRS 61.515 to 61.705, 16.510 to 16.652, and 78.520 to 78.852. This administrative regulation establishes the procedures for issuance of benefits when the death of the recipient is after the member's retirement[~~information required before certain retirement benefits are paid upon the death of a recipient~~].

Section 1. After learning of the death of a recipient, the retirement system shall contact the named beneficiary or estate of the deceased.

Section 2. The following information shall be required before benefits shall be paid[~~retirement system shall require the following information~~]:

(1) A copy of the recipient's death certificate. If the death certificate shows the cause of death to be homicide or the subject of a pending investigation, the retirement office may also require additional evidence relating to the cause of death or investigations and arrests by enforcement agencies and may delay benefits until the cause of death is fully explained;

(2) If there is a benefit payable to a beneficiary and the beneficiary is deceased, a copy of the beneficiary's death certificate;

(3) If the beneficiary is a minor child, a copy of the child's birth verification and a Form 6110, Affidavit of Authorization to Receive Funds on Behalf of Minor, If the minor child has a court appointed guardian or conservator and the court appointed guardian or conservator completed the Form 6110, Affidavit of Authorization to Receive Funds on Behalf of Minor, the guardian or conservator shall submit a copy of the court order appointing the guardian or conservator;

(4) If the beneficiary is divorced from the recipient, a copy of the divorce decree;

(5) If the beneficiary is the surviving spouse of the deceased member and the spouse elects a direct rollover or direct payment of an actuarial refund, refund of contributions, or $5,000 Death Benefit, a Form 6025, Direct Rollover/Direct Payment Election Form for a Member or a Spouse Beneficiary of an Eligible Rollover Distribution; and

(6) If the beneficiary is not the surviving spouse of the deceased member and the nonspouse beneficiary elects a direct rollover or direct payment of an actuarial refund, refund of contributions, or $5,000 Death Benefit, a Form 6026, Direct Rollover/Direct Payment Election Form for a Non-Spouse Beneficiary of an Eligible Rollover Distribution.

(7)[~~Section 3.~~] If the payments are due to an estate, [~~the retirement system shall also require~~] a copy of the court order appointing the[~~an~~] executor, [~~or~~] administrator, or personal representative of the estate, or a copy of the court order dispensing with formal administration of the estate on which the payments due the estate are listed.

(8)[~~Section 4.~~] The beneficiary or authorized individual shall sign a Form 6810, Certification of Beneficiary[~~6860, Affidavit for Recipient of Death Benefits~~], provided by the retirement system.

Section 3 [~~5.~~] Payments shall not be made until all required information, documents, and completed forms are received at the retirement office [~~the affidavit has been completed and all verification submitted~~].

Section 4 [~~6.~~] (1) A recipient shall complete a Form 6130 Authorization for Deposit of Retirement Payment, to have the monthly retirement allowance deposited to an account in a financial institution.

(2) The recipient and the financial institution shall provide the information and authorizations required for the electronic transfer of funds from the State Treasurer's Office to the designated financial institution.

(3)(a) At any time while receiving a retirement allowance, the recipient may change the designated institution by completing a new Form 6130, Authorization for Deposit of Retirement Payment, and filing the form at the retirement office.

(b) The last Form 6130, Authorization for Deposit of Retirement Payment, on file at the retirement office shall control the electronic transfer of the recipient's retirement allowance.

(4) The recipient may complete a Form 6135, Request for Payment by Check, if the recipient does not currently have an account with the financial institution or the recipient's financial institution does not participate in the electronic funds transfer program.

[~~(5) Payments shall not be made until all required information, documents, and forms are received at the retirement office.~~]

Section 5 [~~7.~~] Incorporation by Reference. (1) The following material is incorporated by reference:

(a) Form 6110, "Affidavit of Authorization to Receive Funds on Behalf of Minor", May 2003;

(b) Form 6810, "Certification of Beneficiary", May 2008[~~Form 6860, "Affidavit for Recipient of Death Benefits", July 2004~~];

(c) Form 6130, "Authorization for Deposit of Retirement Payment", May 2008[~~October 2002~~];

(d) Form 6135, "Request for Payment by Check", February 2002; and

(e) Form 6025, "Direct Rollover/Direct Payment Election Form for a Member or a Spouse Beneficiary of an Eligible Rollover Distribution", May 2008[~~2007~~], and

(f) Form 6026, "Direct Rollover/Direct Payment Election Form for a Non-Spouse Beneficiary of an Eligible Rollover Distribution", May 2008[~~2007~~].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, from Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky 40601, Monday through Friday, [~~between 8 a.m. and 4.30 p.m. Monday through Friday.~~]

RANDY OVERSTREET, Chair

APPROVED BY AGENCY: May 15, 2008

FILED WITH LRC: June 13, 2008 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 22, 2008, at 9 a.m. at the Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by July 15, 2008, five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by this date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given the opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until July 31, 2008. 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: J. Eric Wampler, Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky 40601, phone (502) 696-8800 ext. 5501, fax (502) 696-8801.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact: J. Eric Wampler

(1) Provide a brief summary of.

(a) What this administrative regulation does: This administrative regulation provides for procedures for issuance of benefits when the death of the recipient is after the member's retirement.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to set out the procedures for issuance of benefits when the death of the recipient is after the member's retirement.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 16.645(10), (30), 61.623, 61.630, and 78.545 (16), (41) provide for issuance of benefits from the member account in KERS, CERS, and SPRS when the death of the recipient is after the member's retirement.

(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 providing the procedures for issuance of benefits when the death of the recipient is after the member's retirement.

(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 clarifies the procedures, information and forms required for issuance of benefits when the death of the recipient is after the member's retirement, and requires court appointed guardians or conservators, who have completed the Form 6110 on behalf of their minor ward, to submit a copy of the court order appointing the guardian or conservator.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to clarify the procedures, information and forms required for issuance of benefits when the death of the recipient is after the member's retirement;

(c) How the amendment conforms to the content of the authorizing statutes: The authorizing statutes KRS 16.645(10), (30), 61.623, 61.630, and 78.545 (16), (41) provide procedures for issuance of benefits when the death of the recipient is after the member's retirement. The amendment clarifies the procedures and

provides forms for the issuance of benefits when the death of the recipient is after the member's retirement.

(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 providing procedures and forms for issuance of benefits when the death of the recipient is after the member's retirement.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The individual or entity affected by this administrative regulation is the person, trust, or the member's estate that is the beneficiary of the member's account when the death of the recipient is after the member's retirement.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: They will have comply with the procedures and to complete the appropriate forms.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no cost.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Beneficiaries will be able to receive benefits when the death of the recipient is after the member's retirement.

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

(a) Initially: There is no cost to implement this regulation.

(b) On a continuing basis: There is no continuing cost.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Administrative expenses of the retirement system are paid from the Retirement Allowance Account (trust and agency funds).

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

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

(9) TIERING: Is tiering applied? Tiering is not applied. Procedures are the same for all affected individuals.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? No

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

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year?

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years?

(c) How much will it cost to administer this program for the first year?

(d) How much will it cost to administer this program for subsequent years?

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

Revenues (+/-):
Expenditures (+/-):
Other Explanation:

FINANCE AND ADMINISTRATION CABINET
Kentucky Retirement Systems
(Amendment)

105 KAR 1:270. Special federal income tax withholding.

RELATES TO: KRS 61.640, 61.645(9)(g), 26 U.S.C. 72(t), 401(a), 402

STATUTORY AUTHORITY: KRS 61.645(9)(g)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 61.645(9)(g) authorizes the Board of Trustees of Kentucky Retirement Systems to promulgate administrative regulations necessary to carry out the provisions of KRS 61.515 to 61.705, 16 510 to 16.652, and 78.520 to 78.852. 26 U.S.C. 402 establishes the federal taxation requirements regarding direct rollovers of distributions and the withholding of federal income tax. This administrative regulation establishes the procedure for informing affected members of their rights with regard to federal taxation rules and provides forms for members to indicate their preference for federal tax withholding or direct rollover of funds. This administrative regulation also establishes a procedure to issue a check to an alternate payee of a qualified domestic relations order if the alternate payee does not return the form required for federal income tax purposes within a reasonable time.

Section 1. (1) Upon receipt of a request for refund of member contributions from the member, the retirement office shall mail the Form 4525, Application for Refund of Member Contributions and Direct Rollover/Direct Payment Selection, along with a copy of the Special Tax Notice Regarding Payments to the member requesting payment.

(2)(a) The member shall complete the Form 4525, Application for Refund of Member Contributions and Direct Rollover/Direct Payment Selection, and return it to the retirement office.

(b) If the member intends to have the funds rolled over directly into an IRA or other plan, the member shall have the trustee or institution complete the back of the form certifying that the rollover will be accepted.

(3) The refund of contributions shall not be processed until the completed Form 4525, Application for Refund of Member Contributions and Direct Rollover/Direct Payment Selection, is returned by the member to the retirement office.

Section 2. (1) Upon receipt of a completed Form 6010, Estimated Retirement Allowance, on which the member has selected the actuarial refund or partial lump sum option, the retirement office shall mail to the member the Form 6025, Direct Rollover/Direct Payment Election Form for a Member or a Spouse Beneficiary of an Eligible Rollover Distribution, along with the Special Tax Notice Regarding Payments.

(2)(a) The member shall complete the Form 6025, Direct Rollover/Direct Payment Election Form for a Member or a Spouse Beneficiary of an Eligible Rollover Distribution, and return it to the retirement office.

(b) If the member intends to have the funds rolled over directly into an IRA or other plan, the member shall have the trustee or institution complete the back of the form certifying that the rollover will be accepted.

(3) The payment option[~~options~~] selected by the member shall not be processed until the completed Form 6025, Direct Rollover/Direct Payment Election Form for a Member or a Spouse Beneficiary of an Eligible Rollover Distribution, is returned to the retirement office.

Section 3. (1) Upon receipt of a completed Form 6010, Estimated Retirement Allowance, on which the beneficiary who is the surviving spouse of the deceased member has selected the actuarial refund or sixty (60) months certain payment option, the retire-

ment office shall mail to the beneficiary who is the surviving spouse of the deceased member the Form 6025, Direct Rollover/Direct Payment Election Form for a Member or a Spouse Beneficiary of an Eligible Rollover Distribution, along with the Special Tax Notice Regarding Payments.

(2)(a) The beneficiary who is the surviving spouse of the deceased member shall complete the Form 6025, Direct Rollover/Direct Payment Election Form for a Member or a Spouse Beneficiary of an Eligible Rollover Distribution, and return it to the retirement office.

(b) If the beneficiary who is the surviving spouse of the deceased member intends to have the funds rolled over directly into an IRA or other plan, the beneficiary who is the surviving spouse of the deceased member shall have the trustee or institution complete the back of the form certifying that the rollover will be accepted.

(3) The payment options selected by the beneficiary who is the surviving spouse of the deceased member shall not be processed until the completed Form 6025, Direct Rollover/Direct Payment Election Form for a Member or a Spouse Beneficiary of an Eligible Rollover Distribution, is returned to the retirement office.

Section 4. (1) Upon receipt of a completed Form 6010, Estimated Retirement Allowance, on which the beneficiary who is not the surviving spouse of the deceased member has selected the actuarial refund or a sixty (60) months certain payment option, the retirement office shall mail to the beneficiary who is not the surviving spouse of the deceased member the Form 6026, Direct Rollover/Direct Payment Election Form for a Non-Spouse Beneficiary of an Eligible Rollover Distribution, along with the Special Tax Notice Regarding Payments.

(2)(a) The beneficiary who is not the surviving spouse of the deceased member shall complete the Form 6026, Direct Rollover/Direct Payment Election Form for a Non-Spouse Beneficiary of an Eligible Rollover Distribution, and return it to the retirement office.

(b) If the beneficiary who is not the surviving spouse of the deceased member intends to have the funds rolled over directly into an IRA or other plan, the beneficiary who is not the surviving spouse of the deceased member shall have the trustee or institution complete the back of the form certifying that the rollover will be accepted.

(3) The payment option selected by the beneficiary who is not the surviving spouse of the deceased member shall not be processed until the completed Form 6026, Direct Rollover/Direct Payment Election Form for a Non-Spouse Beneficiary of an Eligible Rollover Distribution, is returned to the retirement office.

Section 5. (1)(a) If the alternate payee is eligible for a lump sum portion of the member's contribution account pursuant to a qualified domestic relations order, the Form 4525, Application for Refund of Member Contributions and Direct Rollover/Direct Payment Selection, along with the Special Tax Notice Regarding Payments shall be mailed to the alternate payee.

(b) If the alternate payee is eligible to select a payment option and selects an actuarial refund or partial lump sum, a Form 6025, Direct Rollover/Direct Payment Election Form for a Member or a Spouse Beneficiary of an Eligible Rollover Distribution, along with the Special Tax Notice Regarding Payments shall be mailed to the alternate payee.

(2)(a) The alternate payee shall complete the Form 4525, Application for Refund of Member Contributions and Direct Rollover/Direct Payment Selection, or Form 6025, Direct Rollover/Direct Payment Election Form for a Member or a Spouse Beneficiary of an Eligible Rollover Distribution, and return it to the retirement office.

(b) If the alternate payee intends to have the funds rolled over directly into an IRA or other plan, the alternate payee shall have the trustee or institution complete the back of the Form 4525, Application for Refund of Member Contributions and Direct Rollover/Direct Payment Selection, or Form 6025, Direct Rollover/Direct Payment Election Form for a Member of Spouse Beneficiary of an Eligible Rollover Distribution, certifying that the rollover will be accepted.

(3)(a) The payment of an actuarial refund or partial lump sum pursuant to the qualified domestic relations order shall not be processed until the completed Form 6025, Direct Rollover/Direct Payment Election Form for a Member or a Spouse Beneficiary of an Eligible Rollover Distribution, is returned to the retirement office.

(b) If the payment is a portion of the member's contribution account and the alternate payee does not return the Form 4525, Application for Refund of Member Contributions and Direct Rollover/Direct Payment Selection, within thirty (30) days of receipt of the form, the payment shall be processed and the alternate payee's portion of the refund shall be treated for federal income tax purposes as if the alternate payee had made an election to receive the funds.

Section 6 (1) A member who was last employed as a "qualified public safety employee" as defined in 26 U.S.C. Internal Revenue Code, Section 72(t), may file a Form 4527, Certification by a Qualified Public Safety Employee and Request for an Exception to the ten (10) percent Early Distribution Penalty in IRC 72(t), to avoid the ten (10) percent early distribution tax penalty if electing to receive an actuarial refund, lump sum refund, partial lump sum refund, or the ten (10) years certain option.

(2) The member who was last employed as a "qualified public safety employee" shall file the Form 4527, Certification by a Qualified Public Safety Employee and Request for an Exception to the 10% Early Distribution Penalty in IRC 72(t), with the Form 4525, Application for Refund of Member Contributions and Direct Rollover/Direct Payment Selection, or the Form 6025, Direct Rollover/Direct Payment Election Form for a Member or a Spouse Beneficiary of an Eligible Rollover Distribution, at the retirement office in order to avoid the ten (10) percent early distribution tax penalty.

Section 7. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) Form 4525, "Application for Refund of Member Contributions and Direct Rollover/Direct Payment Selection", May 2008[~~2007~~];

(b) "Special Tax Notice Regarding Payments", May 2008[~~2007~~];

(c) Form 6010, "Estimated Retirement Allowance", July 2004;

(d) Form 6025, "Direct Rollover/Direct Payment Election Form for a Member or a Spouse Beneficiary of an Eligible Rollover Distribution", May 2008[~~2007~~].

(e) Form 6026, "Direct Rollover/Direct Payment Election Form for a Non-Spouse Beneficiary of an Eligible Rollover Distribution", May 2008[~~2007~~]; and

(f) Form 4527, "Certification by a Qualified Public Safety Employees and Request for an Exception to the 10% Early Distribution Penalty in IRC 72(t)", May 2008[~~2007~~].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky 40601, Monday through Friday, from 8 a.m. to 4:30 p.m.

RANDY OVERSTREET, Chair

APPROVED BY AGENCY: May 15, 2008

FILED WITH LRC: June 13, 2008 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 22, 2008, at 9 a.m. at the Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by July 15, 2008, five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by this date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given the opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until July 31, 2008. 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: J. Eric Wampler, Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky 40601, phone (502) 696-8800 ext. 5501, fax (502) 696-8801.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact: J. Eric Wampler

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the procedure for informing affected members of their rights with regard to federal taxation rules and provides forms for members to indicate their preference for federal tax withholding or direct rollover of funds. This administrative regulation also establishes a procedure to issue a check to an alternate payee of a qualified domestic relations order if the alternate payee does not return the form required for federal income tax purposes within a reasonable time.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to set forth the treatment of accounts with regards to federal taxation rules.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The administrative regulation conforms to the requirements of KRS 61.640(8) and federal taxation rules.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation details the procedures and forms necessary for determining federal tax withholding under federal taxation rules.

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

(a) How the amendment will change this existing administrative regulation: This amendment provides for updating of forms required to be filed with the retirement system for federal tax withholding consideration and revising the special tax notice

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to update the forms required to be filed with the retirement system for federal tax withholding consideration and revising the special tax notice.

(c) How the amendment conforms to the content of the authorizing statutes: The federal taxation rules provide for the recipient's eligibility for exceptions to tax penalties, indicate federal tax withholding or direct rollover of funds. The amendment updates the forms and special tax notice.

(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 updating the forms incorporated by reference for federal income tax considerations.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The individuals affected by this administrative regulation are applicants and recipients of retirement benefits from the KERS, CERS, and SPRS.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The applicants and recipients will have to complete the appropriate form applicable to the benefit or tax treatment they are seeking.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no cost.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Applicants and recipients will be able to have the appropriate amount of federal taxes withheld, rollover their distributions, and request exceptions to the IRC 72(t) distribution penalty.

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

(a) Initially: There is no cost to implement this regulation.

(b) On a continuing basis: There is no continuing cost.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Administrative expenses of the retirement system are paid from the Retirement Allowance Account (trust and agency funds).

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

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

(9) TIERING: Is tiering applied? Tiering is not applied. Procedures are the same for all affected individuals.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? No

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

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year?

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years?

(c) How much will it cost to administer this program for the first year?

(d) How much will it cost to administer this program for subsequent years?

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

FINANCE AND ADMINISTRATION CABINET
Kentucky Retirement Systems
(Amendment)

105 KAR 1:310. Fred Capps Memorial Act.

RELATES TO: KRS 16.505-16.652, 61.510-61.705, 78.510-78.852

STATUTORY AUTHORITY: KRS 61.645(9)(g)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 61.621, The Fred Capps Memorial Act, enables an employee of a state-administered retirement system who is killed or disabled from a duty-related injury to receive death or disability benefits equal to those received by hazardous employees under KRS 16.582. This administrative regulation establishes the application and appeal procedure for duty-related death or injury benefits for nonhazardous employees.

Section 1. Application for Duty-related Injury Death Benefits. (1)(a) A written request for duty-related injury death benefits may be made by the surviving spouse, or dependent child, or parent or guardian of dependent child at the Frankfort office of the Kentucky Retirement Systems.

(b) A claim for duty-related injury death benefits shall be verified by the deceased employee's immediate supervisor and agency head on the "Form 6800, Application for Death Benefits Duty Related/In Line of Duty".

(2)(a) The employer, surviving spouse, or dependent child shall submit the following documents:

1. A copy of the death certificate;
2. The employer death investigation report; and
3. An employee job description.

(b) The retirement system may request additional information or medical records, including hospital, emergency room, autopsy, or other related records, and police or other crime report, if necessary, from the employer, surviving spouse, or dependent child.

(3) The application for duty-related injury death benefits shall be reviewed by the board's medical examiners and administered in the same manner as provided in KRS 16.582 and 61.665.

Section 2. Application for Duty-related Injury Disability Benefits. (1)(a) A claim for duty-related injury disability benefits shall be filed by the employee at the Frankfort office of the Kentucky Retirement Systems.

(b) An application for duty-related injury disability benefits shall be made by the employee on the "Form 6000, Notification of Retirement".

(2) The application for duty-related injury disability benefits shall be reviewed by the board's medical examiners and administered in the same manner as provided in KRS 16.582 and 61.665.

Section 3. Time Period for Filing. (1)(a) The application or reapplication for duty-related injury death or duty-related injury disability benefits shall be filed at the retirement office within twenty-four (24) months from the employee's last day of paid employment in a regular full-time position.

(b) The filing period shall begin on the day after the last day of paid employment in a regular full-time position and shall end at close of business on the following 730th calendar day.

(c) If the last day of the filing period is a Saturday, Sunday, or a state or federal holiday, then the application shall be timely filed if received in the retirement office by the close of the next business day following the weekend or holiday.

(2) If rejected, an employee's reapplication for duty-related injury disability benefits based on the same claim of incapacity shall be reconsidered for disability if accompanied by new objective medical evidence. The reapplication shall be filed at the retirement office within twenty-four (24) months from the employee's last day of paid employment in a regular full-time position.

Section 4. (1) When the retirement systems requires an applicant to submit to a medical or psychological examination under KRS 61.665(2)(j) or (3)(c), the retirement systems shall reimburse the applicant for mileage from the applicant's home address as it is on file at the retirement systems, to the place of the examination or evaluation, and returning to the applicant's home address on file at the retirement systems. The applicant shall be reimbursed for the most direct and usually traveled routes.

(2) Mileage shall be based on the "Kentucky Official Highway Map", mileage software, or the most recent edition of the "Rand McNally Road Atlas." The applicant shall complete and submit a Form 8846, Independent Examination Travel Voucher indicating the mileage the applicant traveled from the applicant's home address as it is on file at the retirement systems, to the place of the examination or evaluation, and returning to the applicant's home address on file at the retirement systems. Applicant shall use the most direct and usually traveled routes.

(3) The mileage certified by the applicant shall not be greater than the mileage indicated by the "Kentucky Official Highway Map", mileage software, or the most recent edition of the "Rand McNally Road Atlas" for the most direct and usually traveled route from applicant's home address as it is on file at the retirement systems, to the place of the examination or evaluation, and returning to the applicant's home address on file at the retirement systems. If the mileage certified by the applicant is greater than the mileage indicated by the "Kentucky Official Highway Map", mileage software, or the most recent edition of the "Rand McNally Road Atlas" the retirement systems shall pay the applicant the mileage indicated by the "Kentucky Official Highway Map", mileage software, or the most recent edition of the "Rand McNally Road Atlas."

(4) Reimbursement for use of a privately owned vehicle shall be made at the IRS established standard mileage rate which changes periodically; and shall not exceed the cost of commercial coach fare.

(5) Actual costs for parking shall be reimbursed upon submission of receipts. Applicant shall submit the originals of the parking receipts along with a written request for reimbursement.

(6) Actual bridge and highway toll charges shall be reimbursed if the bridge or highway is on the most direct and usually traveled route. Applicant shall submit the originals of the bridge and highway toll receipts along with a written request for reimbursement.

(7) Applicant shall file at the retirement office a completed Form 8846, Independent Examination Travel Voucher, within fifteen (15) days of the date of the examination or evaluation in order to receive reimbursement for travel expenses.

Section 5. Benefit Payment Procedures. (1) If the employee's application for duty-related injury disability benefits is approved, the employee's disability benefit shall be paid retroactive to the month following the month of the employee's last day of paid employment in a regular full-time position.

(2) If the employee did not receive early retirement benefits or disability retirement benefits under KRS 61.600, upon the employee's selection of a payment option, the retirement office shall pay the employee the total monthly retirement allowances owed.

(3)(a) If the employee did receive early retirement benefits or disability retirement benefits under KRS 61.600, the retirement office shall calculate and pay to the employee the difference between the early retirement benefit or disability retirement benefit which was paid to the employee and the duty-related disability benefit.

(b) The employee shall not change his payment option.

(4) If benefits are payable to a dependent child, the child's parent or guardian shall submit the following documents:

(a) A "Form 6456, Designation of Dependent Child";

(b) If the child is age eighteen (18) or over, verification of full-time student status;

(c) A copy of the birth certificate of each dependent child; and

(d) If a dependent child is a minor, a "Form 6110, Affidavit of Authorization to Receive Funds on Behalf of Minor". If the minor has a court appointed guardian or conservator and the court appointed guardian or conservator completed the Form 6110, Affidavit of Authorization to Receive Funds on Behalf of Minor, the guardian or conservator shall submit a copy of the court order appointing the guardian or conservator;

(e) The parent or guardian shall:

1. Notify the retirement system of the death or marriage of a dependent child or if the dependent child ceases to be a full-time student; and

2. Submit a copy of the dependent child's verification of full-time student status with the retirement system for each semester of study within thirty (30) days following the start and within thirty (30) days following the end of each semester.

(5) Any increases provided to recipients under KRS 61.691 shall be applied to the employee's disability benefit and payments to a dependent child in determining the total retroactive payments owed to the employee and dependent child.

(6) If upon review in accordance with KRS 61.610 or other applicable statute, the board determines that an employee receiving duty-related injury disability benefits no longer meets eligibility requirements, then the board shall determine if the employee is eligible for disability benefits under KRS 61.600.

Section 6 [5.] (1) A recipient shall complete a "Form 6130, Authorization for Deposit of Retirement Payment", to have the monthly retirement allowance deposited to an account in a financial institution.

(2) The recipient and the financial institution shall provide the information and authorizations required for the electronic transfer of funds from the State Treasurer's Office to the designated financial institution.

(3)(a) At any time while receiving a retirement allowance, the recipient may change the designated institution by completing a new "Form 6130, Authorization for Deposit of Retirement Payment", and filing the form at the retirement office in Frankfort.

(b) The last "Form 6130, Authorization for Deposit of Retirement Payment", on file at the retirement office shall control the electronic transfer of the recipient's retirement allowance.

(4) The recipient may complete a "Form 6135, Request for Payment by Check".

(5) The retirement office shall not process the retirement allowance until the recipient has filed a completed "Form 6130, Authorization for Deposit of Retirement Payment", or filed a completed "Form 6135, Request for Payment by Check".

Section 7.[6.] Incorporation by Reference. (1) The following material is incorporated by reference:

(a) ["]Form 6800, "Application for Death Benefits Duty Related/In Line of Duty", April 2003 [", Kentucky Retirement Systems];

(b) ["]Form 6000, "Notification of Retirement", July 2004[", Kentucky Retirement Systems];

(c) ["]Form 6110, "Affidavit of Authorization to Receive Funds on Behalf of Minor", May 2003[," Kentucky Retirement Systems];

(d) ["]Form 6456, "Designation of Dependent Child", July 2004[," Kentucky Retirement Systems];

(e) ["]Form 6130, "Authorization for Deposit of Retirement Payment," May 2008 [October 2002," Kentucky Retirement Systems], and

(f) ["]Form 6135, "Request for Payment by Check", February 2002[," Kentucky Retirement Systems].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky 40601[-6124], Monday through Friday, 8 a.m. to 4:30 p.m.

RANDY OVERSTREET, Chair

APPROVED BY AGENCY: May 15, 2008

FILED WITH LRC: June 13, 2008 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on July 22, 2008, at 9 a.m. at the Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by July 15, 2008, five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by this date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given the opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until July 31, 2008. 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: J. Eric Wampler, Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky 40601, phone (502) 696-8800 ext. 5501, fax (502) 696-8801.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person J. Eric Wampler:

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets out the application and appeal procedures for duty-related death or injury benefits for nonhazardous employees.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to set out the application and appeal procedures for duty-related death or injury benefits for nonhazardous employees.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation sets out the application and appeal procedures for duty-related death or injury benefits for nonhazardous employees pursuant to KRS 61.621 which enables nonhazardous employees killed or disabled from a duty-related injury to receive benefits equal to those received by hazardous employees under KRS 16.582.

(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 statutes by setting out the application and appeal procedures for duty-related death or injury benefits for nonhazardous employees.

(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 provides the procedures for Kentucky Retirement Systems to reimburse a disability recipient for mileage, parking, and toll charges when the retirement systems requires the recipient to submit to an independent medical or psychological examination pursuant to KRS 61.665(2)(j) and (3)(c); requires court appointed guardians or conservators, who have completed the Form 6110 on behalf of their minor ward, to submit a copy of the court order appointing the guardian or conservator; and incorporates an updated Form 6130, Authorization for Deposit of Retirement Payment, that allows a recipient of a retirement allowance or their financial institution to provide the information required for the electronic transfer of funds.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to establish procedures for Kentucky Retirement Systems to reimburse a disability recipient for mileage, parking, and toll charges when the retirement systems requires the recipient to submit to an independent medical or psychological examination pursuant to KRS 61.665(2)(j) and (3)(c); to require court appointed guardians or conservators, who have completed the Form 6110 on behalf of their minor ward, to submit a copy of the court order appointing the guardian or conservator; and to incorporate the updated Form 6130, Authorization for Deposit of Retirement Payment, that allows a recipient of a retirement allowance or their financial institution to provide the information required for the electronic transfer of funds.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes by establishing procedures and forms which further Kentucky Retirement Systems obligation to implement its authority under KRS 61.665, 61.621, and 61.623

(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 establishing procedures and forms which allow Kentucky Retirement Systems to reimburse a disability applicant for mileage, parking, and toll charges when the retirement systems requires the applicant to submit to an independent medical or psychological examination pursuant to KRS 61.665(2)(j) and (3)(c); require court appointed guardians or conservators, who have completed the Form 6110 on behalf of their minor ward, to submit a copy of the court order appointing the guardian or conservator; and incorporates the updated Form 6130 that allows a recipient of a retirement allowance or their financial institution to provide the information required for the electronic transfer of funds.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All applicants and recipients KRS 61.621 duty-related disability retirement benefits from Kentucky Retirement Systems who are required to undergo employment and medical staff review, or complete a Form 6130, Authorization for Deposit of Retirement Payment, and court appointed guardians or conservators, who have completed the Form 6110 on behalf of their minor ward.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: All applicants and recipients of KRS 61.621 duty-related disability retirement benefits from Kentucky Retirement Systems who are required to undergo employment and medical staff review will have submit to an independent medical examination will have comply with the procedures and complete the appropriate forms to receive reimbursement for travel expenses, court appointed guardians or conservators, who have completed the Form 6110 on behalf of their minor ward, will have

to submit a copy of the court order appointing the guardian or conservator before the Form 6110 will be valid; and a recipient of a retirement allowance or their financial institution will have to provide the information required for the electronic transfer of funds, as the financial institutions are already required to do.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no cost.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): There are none.

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

(a) Initially: There is no cost to implement this regulation.

(b) On a continuing basis: There is no continuing cost.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Administrative expenses of the retirement system are paid from the Retirement Allowance Account (trust and agency funds).

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This regulation does not establish any fees nor does it directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Tiering is not applied. Procedures are the same for all affected individuals.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? No

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

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year?

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years?

(c) How much will it cost to administer this program for the first year?

(d) How much will it cost to administer this program for subsequent years?

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

FINANCE AND ADMINISTRATION CABINET
Kentucky Retirement Systems
(Amendment)

105 KAR 1:330. Purchase of service credit.

RELATES TO: KRS 16.645(20), (26), (29), (31), 61.543, 61.552, 61.5525, 61.555, 61.592, 78.545(6), (31), (35), (43), 26 U.S.C 415

STATUTORY AUTHORITY: KRS 61.645(9)(g)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 61.645(9)(g) requires the Board of Trustees of Kentucky Retirement Systems to promulgate all administrative regulations necessary or proper to carry out the provisions of KRS 16.510 to 16.652, 61.515 to 61.705, and 78.520 to 78.852. KRS 16.645(20), (26), (29), (31), 61.543, 61.552, 61.555, 61 592, and 78 545(6), (31), (35), and (43) provide for purchasing service credit. This administrative regulation establishes the documentation required from the employee as proof of eligibility for purchasing service credit, the filing deadlines on which the cost calculation will be made, and the procedures for purchase of service credit.

Section 1. (1) The cost calculation date for determining the cost of the service to be purchased shall be the later of:

(a) The last day of the month in which the request for the cost of the service is received at the retirement office;

(b) The last day of the month the employee designates as the intended purchase date;

(c) The last day of the month in which documentation of the service is filed at the retirement office; [or]

(d) The last day of the month in which the member attains sufficient service credit to be eligible to make the purchase; or

(e) The last day of the month in which the member terminates employment if the member files a completed Form 4172, Notice of Intent to Transfer Lump Sum Payment(s) to Qualified Employer Sponsored Plan, at the retirement office indicating that the member intends to defer the member's lump sum payment for accrued compensatory and annual leave to be paid to the member at termination to the Kentucky Public Employees Deferred Compensation Authority or other qualified employer sponsored plan. The member shall then rollover the funds from the Kentucky Public Employees Deferred Compensation Authority or other qualified employer sponsored plan to Kentucky Retirement Systems as payment, in whole or in part, for the member's service purchase.

(2) The purchase deadline date shall be the later of the cost calculation date or thirty (30) days from the date the purchase cost is mailed to the employee, unless day thirty (30) is a weekend or federal or state holiday, then the purchase deadline date shall be the next business day.

(3) An employee may not make a new request for cost calculation for purchase of service previously requested until the purchase deadline date has passed.

(4) Except as provided in KRS 61 552(16), payment for purchase of service credit shall be filed at the retirement office while the employee is participating in an eligible retirement system and prior to the employee's termination date.

(5) If the member elects to purchase only a portion of the service for which he has requested a cost calculation, the member shall be required to obtain a new cost calculation for the remaining service unless the remaining service is service under KRS 61.552(1) or (23).

Section 2. (1) The employee shall provide documentation necessary for the retirement system to determine that the service meets the eligibility requirements for purchase of service. The documentation may be in the form of:

(a) A statement or letter signed by the reporting official, personnel director or agency head, or if the service is with the university, federal government or military, a statement or letter signed by an authorized employee of the university, federal government or military, except that no employee shall certify his own service. The retirement system may require that the statement be made under oath; or

(b) Copies of personnel and wage records supplied by the agency.

(2) If the retirement system determines that the agency records are not sufficient, the retirement system may require the employee to supplement the agency records with copies of check stubs, W-2 forms, personnel action forms or payroll records in the employee's possession.

(3) If the employee does not have additional documentation of the service, the employee may submit a report of detailed earnings from the Social Security Administration for the period of service, along with two (2) affidavits completed by individuals who earned, or were eligible for, service for the same period in a state administered retirement system with the same employer. Each affiant shall

detail the employee's employment status and length of service.

(4) The retirement office shall determine if all or part of the service is eligible for purchase and shall notify the employee in writing of its determination.

Section 3. (1) For service with a public agency, other than a school board, participating in one (1) of the systems administered by the Kentucky Retirement Systems or with a nonparticipating agency whose service is authorized by statute, the employee shall submit the following documentation and may be required by the system to provide additional information, if necessary for determination:

(a) The beginning and ending dates of the service and any breaks which may have occurred during the service, listed by fiscal year;

(b) The number of calendar months worked;

(c) The position title and status, including full time, part time, probationary, emergency, seasonal, temporary or interim; and

(d) If the employee participated in a retirement plan, and if so, if the plan was a defined contribution or defined benefit plan, and if the employee has taken a refund of contributions to the plan.

(2) For service with a school board, the employee shall provide the following documentation and may be required by the system to provide additional information, if necessary for determination:

(a) The beginning and ending dates of the service and any breaks which may have occurred during the service, listed by fiscal year;

(b) The number of calendar months worked,

(c) The number of days in the employee's employment contract and the actual number of days worked;

(d) The hours worked per day;

(e) The position title and status, including full time, part time, probationary, emergency, seasonal, temporary or interim; and

(f) If the employee participated in a retirement plan, and if so, if the plan was a defined contribution or defined benefit plan, and if the employee has taken a refund of contributions to the plan.

(3) For active duty service in the Armed Forces of the United States, the employee shall provide a copy of the federal form DD-214 or other official military documents clearly indicating:

(a) The date of entry into active duty service;

(b) The date of discharge from active duty service; and

(c) The type of discharge.

(4) For service in the reserve forces, including periods of active duty training, or for service in the National Guard, the employee shall provide copies of official military documents clearly indicating the date of entry and current participation or date of discharge.

(5) For service with the federal government, the employee shall provide the following documentation:

(a) The name of the federal agency where the employee worked;

(b) The beginning and ending dates of the service and any breaks which may have occurred during the service;

(c) The job title;

(d) If the individual worked an average of 100 or more hours per month and if the position was temporary, seasonal or regular full time, and

(e) If the employee participated in a retirement plan and if the employee has taken a refund of contributions to the plan.

(6) For a period when the member was on leave, including educational, maternity and sick leave without pay, the member shall submit documentation of the beginning and ending dates of the period of leave and the type of leave designated by the employer.

(7) For service with one (1) of the state universities in Kentucky, the employee shall provide the following documentation:

(a) The name of the university where the employee worked;

(b) The beginning and ending dates of the service and any breaks which may have occurred during the service;

(c) The job title;

(d) If the individual worked an average of 100 or more hours per month and if the position was temporary, seasonal or regular full time; and

(e) If the employee participated in a benefit plan during the period of employment.

(8) An employee wishing to purchase service credit for out-of-state public service under KRS 61.552(17) and (18) shall request a copy of the "Form 4140, Certification of Out-of-State Service".

(a) The employee shall mail the "Form 4140, Certification of Out-of-State Service", to his former employer and retirement plan for completion, and if the employee wishes to purchase hazardous service in KERS, CERS, or SPRS, he shall also obtain a copy of the description of his duties in the out-of-state position from his former employer. Service credit shall be eligible for purchase as hazardous duty if the position is the same as or substantially similar to positions for which hazardous duty credit has been approved under KRS 61.592;

(b) The employee shall be responsible for obtaining the information requested regarding the period of out-of-state service, and the completed "Form 4140, Certification of Out-of-State Service", and job description shall be submitted to the retirement office,

(c) The retirement system shall determine how much service is eligible for purchase under the statute and shall notify the employee of the full actuarial cost of the service which qualifies for purchase; and

(d) If the retirement system determines that the service is not eligible for purchase, the retirement system shall notify the employee of the reasons.

Section 4. For a purchase based on the actuarial cost, in accordance with KRS 61.5525, the higher of the current rate of pay, final rate of pay, or final compensation times the actuarial age factor shall be determined as follows, except that for an employee of a local school board paid under an employment contract, the current rate of pay shall be equal to the final compensation as of the cost calculation date:

(1) Except for a classified employee of a local school board, current rate of pay shall be determined as follows:

(a) For an hourly employee paid on a seven and one-half (7 1/2) hour day, the hourly rate times 1,950;

(b) For an hourly employee paid on an eight (8) hour day, the hourly rate times 2,080;

(c) For an employee paid by the day, the daily rate times 260;

(d) For an employee paid by the week, the weekly rate times fifty-two (52);

(e) For an employee paid by the month, the monthly rate times twelve (12);

(f) For a part-time employee who averages 100 or more hours per month, the hourly rate times hours per day times 260. If the number of hours worked per day is not fixed by the employer, seven and one-half (7 1/2) hours shall be used;

(g) For an employee who receives a fixed amount in addition to an hourly, daily, weekly, monthly, or annual rate, the current rate shall include all fixed amounts, averaged into the same period;

(h) For an employee simultaneously employed in more than one (1) retirement system administered by the Kentucky Retirement Systems, the higher of the combined current rate of pay, combined final rate of pay, or combined final compensation shall be used as of the cost calculation date.

(2) Final compensation shall be determined as of the cost calculation date, except that the final compensation of nonhazardous members of the County Employees Retirement System or Kentucky Employees Retirement System shall be based on the three (3) fiscal years with the highest average monthly earnings if the sum of the employee's service when added to his age would equal at least seventy-five (75), assuming the employee's service includes:

(a) All service remaining on an active installment purchase agreement;

(b) All service which the employee is eligible to purchase under KRS 61.552(1) and (23)(a) and (b); and

(c) All service the employee would accrue if employment continued through December 31, 2008.

(3) The employee's age rounded to the nearest year as of the cost calculation date shall be used.

(4) The benefit factor used to determine the actuarial cost, in accordance with KRS 61.5525, shall be the benefit factor to which the employee is entitled on the first day of the month following the cost calculation date, except that the benefit factor for nonhazard-

ous employees of the County Employees Retirement System and the Kentucky Employees Retirement System shall be the highest benefit factor to which the employee would be entitled, assuming:

(a) An effective retirement date no later than January 1, 2009; and

(b) Total service as determined in subsection (2) of this section

Section 5. (1) After the employee has purchased service, the retirement system may recalculate the cost of the service if, upon audit, the retirement system determines that any of the information utilized to calculate the cost of the service was incorrect.

(2) If the recalculation results in an increase in the cost of $100 or more, the employee shall have thirty (30) days to pay the additional amount.

(3) If the employee fails to pay the additional amount, the employee's service shall be reduced to the next lower increment or number of months for which the employee is eligible based on the original payment, and the difference shall be refunded to the employee.

Section 6. (1) The wages associated with service purchased under the provisions of KRS 61.552(1) to (5)(a) and (24), which would have qualified as creditable compensation, shall be added to the employee's account and shall be used in determining the employee's final compensation.

(2) An employee purchasing service under the preceding paragraph by increments or by installment purchase agreement shall have the service credited in chronological order beginning with the earliest service.

Section 7. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) [":]Form 4140, "Verification of Out-of-State Service", [revised] July 2000;

(b) Form 4172, "Notice of Intent to Transfer Lump Sum Payment(s) to Qualified Employer Sponsored Plan", May 2008; and

(c) Form 4170, "Direct Transfer/Rollover Authorization Form", April 2002 [, is incorporated by reference.]

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky 40601[-6124], Monday through Friday, 8 a.m. to 4:30 p.m.

RANDY OVERSTREET, Chair

APPROVED BY AGENCY: May 15, 2008

FILED WITH LRC: June 13, 2008 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 22, 2008, at 9 a.m. at the Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by July 15, 2008, five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by this date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given the opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until July 31, 2008. 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. J. Eric Wampler, Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky 40601, phone (502) 696-8800 ext. 5501, fax (502) 696-8801.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person J. Eric Wampler:

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets out the procedures and forms for the purchase of service credit by members of the Kentucky Retirement Systems including the documentation required, filing deadlines for cost calculations, and procedures for purchase.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish procedures and forms for the purchase of service credit by members of the Kentucky Retirement Systems.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 16.645(20), (26), (29), (31, 61.543, 61.552, 61.5525, 61.555, 61.592, 78.545(6), (31), (35), (43), and 26 U.S.C. 415 set out the requirements the purchase of service credit by members of the Kentucky Retirement Systems.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the statutes by setting out the procedures and forms for application for the purchase of service credit by members of the Kentucky Retirement Systems

(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 amends the regulation by adding an additional cost calculation date; requires a new cost calculation following the purchase of a portion of service; and incorporating Form 4172, Notice of Intent to transfer Lump Sum Payment(s) to Qualified Employer Sponsored Plan as well as Form 4170, Direct Transfer/Rollover Authorization Form into the administrative regulation.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to establish procedures and forms for the purchase of service credit by members of the Kentucky Retirement Systems. Specifically, the amendment clarifies the service purchase procedures by setting out an additional cost calculation date and requiring a new cost calculation following the purchase of a portion of service. Additionally, the amendment incorporated the Form 4172, Notice of Intent to transfer Lump Sum Payment(s) to Qualified Employer Sponsored Plan as well as Form 4170, Direct Transfer/Rollover Authorization Form, which are utilized in the use of pre-tax funds in the purchase of service credit.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes by establish procedures and forms for the purchase of service credit by members of the Kentucky Retirement Systems.

(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 establish procedures and forms for the purchase of service credit by members of the Kentucky Retirement Systems.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All members who wish to purchase authorized service credit with KERS, CERS, and SPRS.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment They will have to comply with the establish procedures and incorporated forms for the purchase of service credit.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3). There is no cost.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): There are none.

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

(a) Initially: There is no cost to implement this regulation.

(b) On a continuing basis: There is no continuing cost.

(6) What is the source of the funding to be used for the imple-

mentation and enforcement of this administrative regulation: Administrative expenses of the retirement system are paid from the Retirement Allowance Account (trust and agency funds).

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This regulation does not establish any fees nor does it directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Tiering is not applied. Procedures are the same for all affected individuals.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? No

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

3. Identify each state or federal statute or federal regulation that requires or authonzes the action taken by the administrative regulation.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year?

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years?

(c) How much will it cost to administer this program for the first year?

(d) How much will it cost to administer this program for subsequent years?

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

Revenues (+/-):
Expenditures (+/-):
Other Explanation:

FINANCE AND ADMINISTRATION CABINET
Kentucky Retirement Systems
(Amendment)

105 KAR 1:360. Health and hospital insurance.

RELATES TO: KRS 61.702
STATUTORY AUTHORITY: KRS 61.645(9)(g)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 61.702 provides for health and hospital insurance for eligible retirees, spouses, dependents, and beneficiaries. This administrative regulation establishes procedures for the administration of health and hospital insurance benefits.

Section 1. The recipient of health and hospital insurance whose premium exceeds the recipient's monthly benefit allowance shall be billed by the retirement systems on a monthly basis for the balance of insurance premiums.

(1) Payment by the recipient for the balance of insurance premiums for insurance coverage effective that month shall be received at the retirement systems no later than day twenty-five (25)[~~fifteen (15)~~] of the month.

(a) The recipient may pay for the balance of insurance premiums by check from a financial institution; or

(b) The recipient may pay for the balance of insurance premiums by monthly automatic electronic transfer of funds by completing and filing a Form 6131, Bank Draft Authorization for Direct Pay Accounts.

(2) Failure by the recipient to make timely payment for the balance of insurance premiums shall result in cancellation of insurance coverage effective the month payment is due, and the recipient shall not be eligible until the next open enrollment period for insurance coverage.

Section 2. Incorporation by Reference. (1) [~~"~~]Form 6131, "Bank Draft Authorization for Direct Pay Accounts", 5/08[~~July 2002", Kentucky Retirement Systems,~~] is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky 40601[~~-6124~~], Monday through Friday, 8 a.m. to 4.30 p.m.

RANDY OVERSTREET, Chair
APPROVED BY AGENCY: May 15, 2008
FILED WITH LRC: June 13, 2008 at 11 a m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 22, 2008, at 9 a.m. at the Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by July 15, 2008, five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by this date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given the opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until July 31, 2008. 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 J. Eric Wampler, Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky 40601, phone (502) 696-8800 ext. 5501, fax (502) 696-8801.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact: J. Eric Wampler

(1) Provide a brief summary of:

(a) What this administrative regulation does: KRS 61.702 provides for health and hospital insurance for eligible retirees, spouses, dependents, and beneficiaries. This administrative regulation establishes procedures for the administration of health and hospital insurance benefits.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to set out the procedures for the administration of health and hospital insurance benefits.

(c) How this administrative regulation conforms to the content of the authonzing statutes: The administrative regulation sets out the procedure for recipients of health and hospital insurance who are directly billed for the balance of the health insurance premium once a month, either by check or by monthly automatic electronic transfer of funds from a financial institution.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The administrative regulation sets out the procedure for recipients of health and hospital insurance who are directly billed for the balance of the health insurance premium once a month, either by check or by monthly automatic electronic transfer of funds from a financial institution.

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

(a) How the amendment will change this existing administrative regulation: This amendment changes the due date for the direct payment of the balance of the health insurance premium from the 15th day of the month to the 25th day of the month and provides for an amendment to Form 6131, Bank Draft Authonzation for Direct Pay Accounts.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to give recipients of health and hospital insurance who are directly billed for the balance of the health insurance premium additional time to submit the direct payment of the balance of the health insurance premium and to provide for an amendment to Form 6131, Bank Draft Authorization for Direct Pay Accounts, which authorizes methods for the recipient to supply the financial institution information.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 61.702 provides that recipients must pay certain premiums for health insurance. This amendment conforms to that statute by establishing the due date for the direct payment of the balance of the health insurance premium from the 15th day of the month to the 25th day of the month and by amending Form 6131, Bank Draft Authorization for Direct Pay Accounts, to simplify the automatic electronic payment of insurance premiums.

(d) How the amendment will assist in the effective administration of the statutes: This amendment assists in the effective administration of the statutes by changing the due date for the health insurance premium direct payment from the 15th day of the month to the 25th day of the month and providing for an amendment to Form 6131, Bank Draft Authorization for Direct Pay Accounts.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The administrative regulation will affect recipients of health and hospital insurance benefits (currently approximately 2588 recipients) that are directly billed the balance of their health insurance premiums.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment. They will have to complete the appropriate form and the pay the premium by the 25th of the month rather than the 15th.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no cost.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): They will be able to participate in the group health insurance and pay the additional premiums due in a timely manner.

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

(a) Initially: There is no cost to implement this regulation.

(b) On a continuing basis: There is no continuing cost.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Administrative expenses of the retirement system are paid from the Retirement Allowance Account (trust and agency funds).

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

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

(9) TIERING: Is tiering applied? Tiering is not applied. Procedures are the same for all affected individuals.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? No

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

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year?

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years?

(c) How much will it cost to administer this program for the first year?

(d) How much will it cost to administer this program for subsequent years?

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

FINANCE AND ADMINISTRATION CABINET
Kentucky Retirement Systems
(Amendment)

105 KAR 1:370. Kentucky Retirement Systems Personnel Policies.

RELATES TO: KRS 61.645(9)(c), (d), (g)

STATUTORY AUTHORITY: KRS 61.645(9)(d), (g)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 61.645(9)(g) requires the Board of Trustees of Kentucky Retirement Systems to promulgate all administrative regulations necessary or proper in order to carry out the provisions of KRS 61.515 to 61.705, 16.510 to 16.652, and 78.520 to 78.852. KRS 61.645(9)(c) provides that, effective December 1, 2002, all employees of the Kentucky Retirement Systems shall be transferred to a personnel system adopted by the board of trustees. KRS 61.645(9)(d) requires the board of trustees to promulgate administrative regulations to establish a fair, equitable, and comprehensive personnel policy. These policies and procedures are incorporated by reference to comply with the provisions of KRS 61.645(d). This administrative regulation establishes the "Kentucky Retirement Systems Personnel Policies".

Section 1. Incorporation by Reference. (1) The "Kentucky Retirement Systems Personnel Policies", as amended May 15, 2008[~~August 17, 2006 and November 16, 2006~~] is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky 40601[~~-6124~~], Monday through Friday, 8 a.m. to 4:30 p.m.

RANDY OVERSTREET, Chair

APPROVED BY AGENCY: May 15, 2008

FILED WITH LRC: June 13, 2008 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 22, 2008, at 9 a.m. at the Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by July 15, 2008, five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by this date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given the opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until July 31, 2008. Send written notification of intent to be heard at the public hearing or written com-

ments on the proposed administrative regulation to the contact person.

CONTACT PERSON. J. Eric Wampler, Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky 40601, phone (502) 696-8800 ext. 5501, fax (502) 696-8801.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact: J. Eric Wampler

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation established the "Kentucky Retirement Systems Personnel Policies."

(b) The necessity of this administrative regulation: KRS 61.645(9)(c) provides that, effective December 1, 2002, all employees of the Kentucky Retirement Systems shall be transferred to a personnel system adopted by the Board of Trustees. KRS 61.645(9)(d) requires the Board of Trustees to promulgate administrative regulations to establish a fair, equitable, and comprehensive personnel policy. This administrative regulation established the "Kentucky Retirement Systems Personnel Policies."

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 61.645(9)(d) requires the Board to adopt by administrative regulation a fair, equitable, and comprehensive personnel policy.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: KRS 61.645(9)(d) requires the Board to adopt by administrative regulation a fair, equitable, and comprehensive personnel policy.

(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 an amendment to the "Kentucky Retirement Systems Personnel Policies," which are incorporated by reference.

(b) The necessity of the amendment to this administrative regulation: The "Kentucky Retirement Systems Personnel Policies" were amended by the Board of Trustees on May 15, 2008. This amendment is necessary to incorporate the amended "Kentucky Retirement Systems Personnel Policies" into this regulation.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 61.645(9)(d) requires the Board of Trustees to promulgate administrative regulations to establish a fair, equitable, and comprehensive personnel policy.

(d) How the amendment will assist in the effective administration of the statutes: KRS 61 645(9)(d) requires the Board to adopt by administrative regulation a fair, equitable, and comprehensive personnel policy. This amendment incorporates amendments to the "Kentucky Retirement Systems Personnel Policies."

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This amendment to the administrative regulation, establishing the "Kentucky Retirement Systems Personnel Policies," will affect the 251 employees of the Kentucky Retirement Systems.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: There are none.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no cost.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The amendment places no new duties on the employees.

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

(a) Initially: There is no cost to implement this regulation.

(b) On a continuing basis: There is no continuing cost.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Administrative expenses of the Kentucky Retirement Systems are paid from the Retirement Allowance Account (trust and agency funds).

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

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

(9) TIERING: Is tiering applied? Tiering is not applied. Policies and procedures apply to all employees of the Kentucky Retirement Systems.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? No

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

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year?

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years?

(c) How much will it cost to administer this program for the first year?

(d) How much will it cost to administer this program for subsequent years?

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

Revenues (+/-):
Expenditures (+/-):
Other Explanation:

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

401 KAR 10:026. Designation of uses of surface waters.

RELATES TO: KRS 146.200-146.360, 146.410-146.535, 146.550-146.570, 146.600-146.619, 146.990, 224.01-010, 224.01-400, 224.16-050, 224.16-070, 224.70-100-224.70-140, 224.71-100-224.71-145, 224.73-100-224.73-120

STATUTORY AUTHORITY: KRS 146.220, 146.241, 146.270, 146.410, 146.450, 146.460, 146.465, 224.10-100, 224.16-050, 224.16-060, 224.70-100, 224.70-110, 40 C.F.R. Part 131, 16 U.S.C. 1271-1287 [~~et seq.~~], 1531-1544 [~~et seq.~~], 33 U.S.C. 1311, 1313, 1314, 1316, 1341

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224 10-100 requires the Environmental and Public Protection Cabinet to develop and conduct a comprehensive program for the management of water resources and to provide for the prevention, abatement, and control of pollution. This administrative regulation and 401 KAR 10:001, 10:029, 10 030, and 10:031[~~5 002, 5 029, 5.030, and 5 031~~] establish procedures to protect the surface waters of the Commonwealth, and thus protect water resources. This administrative regulation applies the designated uses described in 401

KAR 10 031[5 031] to the surface waters of the Commonwealth. This administrative regulation also makes all surface waters subject to the general criteria specified in 401 KAR 10 031[5 031], Section 2. [Definitions for terms used in this administrative regulation are found in 401 KAR 5 002.]

Section 1. Scope of Designation. (1) Surface waters listed in this administrative regulation shall be designated for all legitimate uses contained in KRS 224.70-100(1) except as specified in 401 KAR 10:031[5 031], Sections 5 and 8, or until redesignated in accordance with the procedures of this administrative regulation.

(2) Designated uses are:

(a) Warm water aquatic habitat;

(b) Cold water aquatic habitat;

(c) Primary contact recreation;

(d) Secondary contact recreation;

(e) Domestic water supply; [and]

(f) Outstanding state resource water; and

(g) Modified warm water aquatic habitat.

(3) Listed waters shall meet all criteria applicable to their designated uses and those criteria listed in 401 KAR 10:031[5 031], Section 2, unless the cabinet grants an exception pursuant to 401 KAR 10:031[5:031], Section 10 or 11.

(4) Outstanding state resource waters may have unique water quality characteristics that shall be protected by additional criteria established in 401 KAR 10:031[5:031], Section 8.

Section 2. Redesignation of Surface Water Uses. (1)(a) Surface waters may be redesignated only upon affirmative findings by the cabinet pursuant to Sections 3 and 4 of this administrative regulation.

(b) Before redesignating a surface water, the cabinet shall provide notice and an opportunity for a public hearing

(2) In redesignating a surface water, the cabinet shall ensure that its water quality standards provide for the attainment and maintenance of the water quality standards of downstream surface waters.

(3) A designated use shall not be removed for a surface water if that use is an existing use, or if the use may be attained by implementing effluent limitations required under Sections 301(b) and 306 of the Clean Water Act, 33 U.S.C. 1311(b) and 1316, and by implementing cost-effective [and reasonable] best management practices for nonpoint source control.

(4) If a surface water is designated for a use that is not an existing use, the cabinet shall redesignate the surface water upon demonstration that the designated use is unattainable because:

(a) Naturally occurring pollutant concentrations prevent the attainment of the use;

(b) Natural, ephemeral, intermittent, or low flow conditions or water levels prevent the attainment of the use, unless these conditions may be compensated for by the discharge of sufficient volume of effluent discharges;

(c) Human caused conditions or sources of pollution that prevent the attainment of the use and cannot be remedied or would cause more environmental damage to correct than to leave in place;

(d) Dams, diversions, or other types of hydrologic modifications preclude the attainment of the use, and it is not feasible to restore the surface water to its original condition or to operate such modification in a way that would result in the attainment of the use;

(e) Physical conditions related to the natural features of the surface water, but unrelated to water quality, preclude attainment of the aquatic life use, such as the lack of a proper substrate, cover, flow, depth, pools, or riffles[, and the like, unrelated to water quality, preclude attainment of the aquatic life use]; or

(f) Controls more stringent than those required by Sections 301(b) and 306 of the Clean Water Act, 33 U.S.C. 1311(b) and 1316, would result in substantial and widespread economic and social impact as determined by the guidelines in ["]Interim Economic Guidance for Water Quality Standards Workbook["], EPA, March 1995 [incorporated by reference in Section 6 of this administrative regulation].

(5) Redesignations shall be consistent with the antidegradation provisions of 401 KAR 10 029 and 10:030[5:029 and 401 KAR 5:030].

Section 3. Documentation for Redesignations. (1)(a) A person may request redesignation of surface water uses by petition to the cabinet.

(b) The petitioner shall provide the cabinet with the documentation required in subsection (3) of this section and shall have the burden of proof that the redesignation is appropriate.

(2)(a) The cabinet may propose redesignations of surface water uses.

(b) The cabinet shall provide documentation for those surface waters that it proposes for use redesignation.

(3) Documentation to support the redesignation of a surface water of the Commonwealth shall be:

(a) A United States Geological Survey 7.5 minute topographic map or its equivalent [approved by the cabinet] showing those surface waters to be redesignated, with a description consisting of a river mile index with existing and proposed discharge points;

(b) Existing uses and water quality data for the surface waters for which the redesignation is proposed. If adequate data are unavailable, additional studies shall[may] be required by the cabinet,

(c) Descriptions of general land uses and specific land uses adjacent to the surface waters for which the redesignation is proposed;

(d) The existing and designated uses of the downstream waters into which the surface water under consideration discharges;

(e) General physical characteristics of the surface water including width, depth, bottom composition, and slope;

(f) The frequency of occasions when there is no natural flow in the surface water and the $7Q_{10}$ and harmonic mean flow values for the surface water and adjacent surface waters;

(g) An assessment of the existing and potential aquatic life habitat in the surface waters under consideration and the adjacent upstream surface waters.

1. The existing aquatic life shall be documented and livestock and natural wildlife dependence on the surface water shall be assessed.

2. The occurrence of individuals or populations, indices of diversity and well-being, and abundance of species of any unique native biota shall be documented;

(h) The proposed designated uses for the surface water in question; and

(i) An explanation of the irretrievable person-induced, or natural conditions that[which] preclude attainment of a higher use designation or an assessment of the substantial and widespread social and economic impacts resulting from the imposition of additional controls necessary for existing point sources, beyond the most stringent effluent limitation levels normally required for the sources.

Section 4. Procedures for Redesignation. (1) For each of the surface waters for which a redesignation is proposed, the cabinet or petitioner shall prepare a fact sheet containing the following information:

(a) The name and address of the petitioner;

(b) The name and sketch or description of the surface water proposed for specified use redesignations, including the location of existing and proposed dischargers;

(c) The proposed use redesignations;

(d) A brief abstract of the supportive documentation which demonstrates that the redesignation is appropriate;

(e) The appropriate water quality criteria for the surface water based on the proposed designated use;

(f) The treatment requirements proposed for discharges to the surface water in question if designated for the proposed use; and

(g) A "plain English" summary of the implications of the designation for the community and other users or potential users of the surface water in question.

(2) The cabinet shall document the determination to propose or deny redesignation as a result of a petition, and shall provide a copy of the decision to the petitioner and other interested parties.

Section 5. Surface Water Use Designations. (1) Listed in the tables below are the use designations for specific surface waters of

the Commonwealth. The county column indicates the county in which the mouth or outlet of the surface water is located. The identifying symbols for use designations are listed in table A of this section [:]

Table A: Use Designation Symbols	
WAH	Warm Water Aquatic Habitat
CAH	Cold Water Aquatic Habitat
PCR	Primary Contact Recreation
SCR	Secondary Contact Recreation
DWS	Domestic Water Supply, applicable at existing points of public water supply intake[withdrawal]
OSRW	Outstanding State Resource Water
MWAH	Modified Warm Water Aquatic Habitat

(2)(a) Surface waters not specifically listed in this section are designated for the use of warm water aquatic habitat, primary contact recreation, secondary contact recreation and domestic water supply in accordance with Section 1 of this administrative regulation.

(b) Waters where domestic water supply criteria in 401 KAR 10:031, Section 6, are implemented are found in Table B in this section.

Table B: SURFACE WATER INTAKES FOR DOMESTIC WATER SUPPLY USE		
Name	Description	County
BIG SANDY RIVER BASIN		
Elkhorn City Water Department	Mile 13.7 of Russell Fork	Pike
Paintsville Utilities Commission	Mile 38 9 of Levisa Fork	Johnson
Louisa Municipal Water Works	Mile 0 6 of Levisa Fork	Lawrence
Prestonsburg City Utilities Commission	Mile 57.5 of Levisa Fork	Floyd
Pikeville Water Works/US Filter	Mile 88 2 of Levisa Fork	Pike
Martin County Water District #1	Mile 23 8 of Tug Fork	Martin
US Filter/Southern Water & Sewer District	Mile 65.4 of Levisa Fork	Floyd
Jenkins Water Works	Mile 0 2 of Little Elkhorn Creek (Elkhorn Lake)	Letcher
Mountain Water District	Mile 4.6 of Russell Fork	Pike
Martin County Water District #1	Mile 23 8 of Tug Fork	Martin
Jenkins Water Works	Mile 24.1 of Elkhorn Creek	Letcher
Little Sandy River Basin		
Grayson Utility Commission	Mile 40.1 of Little Sandy River	Carter
Greenup Water Plant	Mile 0 7 of Little Sandy River	Greenup
Tygarts Creek Basin		
Olive Hill Water Works	Mile 2.2 of Perry Branch (Olive Hill Reservoir)	Carter
Olive Hill Water Works	Mile 81.1 of Tygarts Creek	Carter
Upper Cumberland River Basin		
Water Service Corporation of KY	Mile 3 2 of Little Yellow Creek (Fern Lake)	Bell
Somerset Water Service	Mile 513.6 of Cumberland River (Lake Cumberland)	Pulaski
Corbin City Utilities Commission	Mile 17.3 of Laurel River (City Reservoir)	Laurel
Burnside Water Company	Mile 517.6 of Cumberland River (Lake Cumberland)	Pulaski
Albany Municipal Water Works Plant A	Mile 7.0 of Indian Creek (Lake Cumberland)	Clinton
Monticello Water & Sewer Commission	Mile 502 2 of Cumberland River (Lake Cumberland)	Wayne
London Utility Commission	Mile 1 2 of Indian Camp Creek (Laurel River Reservoir)	Laurel
Harlan Municipal Water Works	Mile 0.2 of Poor Fork	Harlan
Mt Vernon Municipal Water Works	Mile 3 3 of Renfro Creek (Lake Linville)	Rockcastle
Laurel County Water Department #2	Mile 23.9 of Laurel River (Dorthea Dam)	Laurel
McCreary County Water District Plant A	Mile 8.9 of Laurel Creek (Laurel Creek Reservoir)	McCreary
Burkesville Municipal Water Works	Mile 427.05 of Cumberland River	Cumberland
Mckee Municipal Water Works	Mile 2.3 of Bills Branch (Mckee City Reservoir)	Jackson
Williamsburg Water Works	Mile 584.15 of Cumberland River	Whitley
Jamestown Municipal Water Works	Mile 3 9 of Greasy Creek Branch (Lake Cumberland)	Russell
Jackson County Water Association Inc	Mile 2.1 of Flat Lick Creek (Beulah [Tyner] Lake)	Jackson
Knox County Utility Commission	Mile 642.61 of Cumberland River	Knox
Wood Creek Water District	Mile 7 2 of Wood Creek (Wood Creek Lake)	Laurel
Cumberland Water Works	Mile 25 2 of Poor Fork	Harlan
Pineville Water System	Mile 3 2 of Cannon Creek (Cannon Creek Lake)	Bell
Benham Water Works	Mile 3 5 of Looney Creek	Harlan
Woodson Bend Resort	Mile 2.98 of South Fk. Cumberland River (Lake Cumberland)	Pulaski
Barbourville Utility Commission	Mile 1.3 of Indian Camp Creek (Laurel River Lake)	Laurel

Table B: SURFACE WATER INTAKES FOR DOMESTIC WATER SUPPLY USE		
Cawood Water Distnct	Mile 11 0 of Martins Fork	Harlan
Cumberland County Water District	Mile 419 7 of Cumberland River	Cumberland
Ky Parks Cumberland Falls	Mile 562 5 of Cumberland River	Whitley
Barbourville Utility Commission	Mile 635 5 of Cumberland River	Knox
Albany Municipal Water Works Plant B	Mile 6 7 of Indian Creek (Lake Cumberland)	Clinton
McCreary County Water District Plant B	Mile 31 0 of South Fork Cumberland River (Lake Cumberland)	McCreary
Evarts Municipal Water Works	Mile 0.1 on UT of Bailey Creek. UT at mile 0 6	Harlan
Evarts Municipal Water Works	Mile 1.0 of Bailey Creek	Harlan
Bell County Forestry Camp	Mile 0 2 of Bear Creek (Chenoa Lake)	Bell
Licking River Basin		
Millersburg Municipal Water Works	Mile 13 3 of Hinkston Creek	Bourbon
Paris Municipal Water Works	Mile 16 7 of Stoner Creek	Bourbon
Northern Ky Water Service District Plant A	Mile 4 8 of Licking River	Kenton
Mt Sterling Water & Sewer System	Mile 36.1 ofSlate Creek at mile 36.1 (Reservoir)	Montgomery
Cynthiana Municipal Water Works	Mile 51 2 of South Fork Licking River	Harrison
Flemingsburg Utilities	Mile 0 7 of UT to Town Branch (Flemingsburg Lake)	Fleming
Williamstown Municipal Water	Mile 1 89 of Lake Branch (Lake Williamstown)	Grant
Morehead State University Water Plant	Mile 0 7 of Evans Branch (Evans Branch Impoundment)	Rowan
Morehead State University Water Plant	Mile 13 7 of Tripletts Creek	Rowan
Carlisle Municipal Water Plant	Mile 3 5 of UT to Brushy Fork (City Lake)	Nicholas
Falmouth Water Plant	Mile 52.7 of Licking River	Pendleton
Morehead Utility Plant Board	Mile 177.7 of Licking River	Rowan
West Liberty Water Company	Mile 228 6 of Licking River	Morgan
Western Fleming Water District	Mile 102 5 of Licking River	Nicholas
Salyersville Municipal Water Works	Mile 273 2 of Licking River	Magoffin
Cynthiana Municipal Water Works	Mile 84.5 of Licking River	Harrison

Table B: SURFACE WATER INTAKES FOR DOMESTIC WATER SUPPLY USE		
Flemingsburg Utilities	UT of Town Branch at mile 1.6 (Old Reservoir)	Fleming
Flemingsburg Utilities	Mile 131.8 of Licking River	Fleming
Carlisle Municipal Water Department	Mile 110 2 Licking River	Nicholas
West Liberty Water Company	Mile 3 9 of North Fork Licking River (Cave Run Lake)	Rowan
Cave Run Water Commission	Mile 197.4 of Licking River (Cave Run Lake)	Menifee
Rattlesnake Ridge Water Distnct	Mile 57.4 of Little Sandy River (Grayson Lake)	Elliott
Kentucky River Basin		
Lancaster Municipal Water Works	Mile 145.2 of Kentucky River (Pool #8)	Garrard
Northpoint Training Center	Mile 17.3 of Dix River (Herrington Lake)	Boyle
Frankfort Electnc & Water Plant Board	Mile 71.7 of Kentucky River (Pool #4)	Franklin
Hazard Water Department	Mile 104.1 of North Fork Kentucky River	Perry
Wilmore Utilities System	Mile 117.2 of Kentucky River (Pool #6)	Jessamine
Nicholasville Water Works	Mile 157.9 of Kentucky River (Pool #8)	Jessamine
Berea Municipal Utilities	Mile 3 6 of Cowbell Creek Cowbell Lake	Madison
Jackson Municipal Water Works	Mile 47.2 of North Fork Kentucky River	Breathitt
Kentucky Amencan Water Company Plant A	Mile 171 5 of Kentucky River (Pool #9)	Fayette
Kentucky Amencan Water Company Plant B	Mile 10 6 of East Hickman Creek (Reservoir #4)	Fayette
Danville Water Works	Mile 18.9 of Dix River (Herrington Lake)	Boyle
Lawrenceburg Municipal Water Works	Mile 86 2 of Kentucky River	Anderson
Versailles Municipal Water Works	Mile 87.7 of Kentucky River (Pool 5)	Woodford
Harrodsburg Municipal Water Works	Mile 121.0 of Kentucky River (Pool 7)	Mercer
Stanford Water Works	Mile 6 0 of Neals Creek.(Rice Lake [Stanford City Reservoir])	Lincoln
Richmond Utilities Board	Mile 206.49 of Kentucky River (Pool 11)	Madison
Whitesburg Municipal Water Works/Veolia Water	Mile 150 9of North Fork Kentucky River	Letcher

Table B: SURFACE WATER INTAKES FOR DOMESTIC WATER SUPPLY USE		
Manchester Water Works	Mile 3 9 of Beech Creek (Bert Combs Lake)	Clay
Georgetown Municipal Water & Sewer	Mile 33 5 of North Elkhorn Creek	Scott
Beattyville Water Works	Mile 1.3 of North Fork Kentucky River (Pool #14)	Lee
Bullock Pen Water Distnct	Mile 2 8 Of Bullock Pen Creek (Bullock Pen Lake)	Grant
Ky Parks Natural Bridge State Park	Mile 0 11 of Mill Creek (Mill Creek Lake)	Powell
Winchester Municipal Utilities	Mile 6 5 of Lower Howard Creek (Winchester Reservoir [Carol E. Ecton Reservoir])	Clark
Winchester Municipal Utilities	Mile 1180.8 of Kentucky River (Pool #10)	Clark
Campton Water Works	Mile 0 3 of Hiram Branch (Campton Lake)	Wolfe
Hyden-Leslie County Water Distnct	Mile 75.4 of Middle Fork Kentucky River (Buckhorn Reservoir)	Leslie
Booneville Water & Sewer Distnct	Mile 12 8 of South Fork Kentucky River	Owsley
Georgetown Municipal Water & Sewer	Mile 0.61 of UT (Royal Springs) at mile 33 5 of North Elkhorn Creek	Scott
Owenton Water Works	Mile 0 6 of Severn Creek	Owen
Owenton Water Works	Mile 1.1 of UT to North Severn Creek at mile 5 5 (Lower Thomas Lake)	Owen
Irvine Municipal Utilities	Mile 223 4 of Kentucky River (Pool #11)	Estill
Bluegrass Army Depot	Mile 0.4 of Little Muddy Creek (Lake Vega)	Madison
Beech Fork Water Commission	Mile 0 3 of Beech Fork (Beech Fork Reservoir)	Powell
Berea College Water Utility	Mile 2 1 of East Fork Silver Creek (Lower Silver Creek Lake)	Madison
Berea Municipal Utilities	Mile 2.8 of East Fork Silver Creek (Upper Silver Creek Lake [Kales Lake])	Madison
Berea Municipal Utilities	Mile 2 5 of Owsley Fork (Owsley Fork Lake)	Madison
Manchester Water Works	Mile 18 9 of Goose Creek	Clay
Blackey Municipal Water Works	Mile 131 0 of North Fork Kentucky River	Letcher
Beech Fork Water Commission	Mile 31.0 of Red River	Powell
Salt River Basin		

Table B: SURFACE WATER INTAKES FOR DOMESTIC WATER SUPPLY USE		
Shelbyville Municipal Water & Sewer Commission	Mile 28 0 of Guist Creek (Guist Creek Lake)	Shelby
Bardstown Municipal Water Works	Mile 1.1 of Buffalo Creek (Lake Sympson)	Nelson
Lebanon Water Works Company	Mile 98 2 of Rolling Fork River	Marion
Springfield Water Works	Mile 4.2 of Long Lick Creek (Willisburg Lake)	Washington
Lebanon Water Works Company	Mile 1.0 of Fagan Branch (Fagan Branch Reservoir)	Marion
Springfield Water Works	Mile 1.3 of Allen Branch (Springfield Reservoir)	Washington
Green River Basin		
Hidden Valley Springs	Mile 0.4 of Hidden Valley Spring of UT to Rock Creek at mile 5 9	Grayson
Morgantown Utilities Commission	Mile 144.8 of Green River	Butler
Campbellsville Water Works	Mile 1 3 of Trace Fork (City Reservoir)	Taylor
Columbia Utilities Commission	Mile 42.7 of Russell Creek	Adair
Glasgow Water Co/Plant B	Mile 22.4 of Beaver Creek	Barren
Greensburg Municipal Water Works	Mile 283 5 of Green River	Green
Livermore Water Works	Mile 71.9 of Green River	McLean
Elizabethtown Municipal Water Works A	From Old City Spring at mile 10 6 of Valley Creek	Hardin
Elizabethtown Municipal Water Works A	Garthers Station Spring at mile 6 9 of Valley Creek	Hardin
Bowling Green Municipal Utilities	Mile 38 1 of Barren River	Warren
Green River Valley Water Distnct	Rio Springs at UT to Green River at mile 240 6	Hart
Hodgenville Water Works	Mile 5 8 of North Fork Nolin River	Larue
Hardinsburg/Us Filter	Tules Creek at mile 1.2 (Rough River Reservoir)	Breckinridge
Central City Municipal Water & Sewer	Mile 86.0 of Green River	Muhlenberg
Calhoun Water Works	Mile 63 9 of Green River	McLean
Hartford Municipal Water Works	Mile 29 8 of Rough River	Ohio
Greenville Utilities Commission	Luzerne Lake (Luzerne Lake no longer connected to Caney Creek at mile 2 3	Muhlenberg
Ohio County Water Plant	Mile 131.9 of Green River	Ohio

Table B: SURFACE WATER INTAKES FOR DOMESTIC WATER SUPPLY USE		
Franklin Water Plant	Mile 23 4 of West Fork Drake's Creek	Simpson
Glasgow Water Co/Plant A	Mile 86 8 of Barren River (Barren River Reservoir)	Barren
Leitchfield Municipal Water Works	Mile 107.7 of Rough River (Reservoir)	Grayson
Campbellsville Water Works	Mile 5 3 of Robinson Creek (Green River Reservoir)	Taylor
Edmonson County Water District	Mile 183 7 of Green River	Edmonson
Elizabethtown Municipal Water Works B	Mile 2 1 of Freeman Creek (Freeman Lake)	Hardin
Tompkinsville Municipal Water Works	Mile 6 0 of Mill Creek (Mill Creek Reservoir)	Monroe
Madisonville Municipal Water Works	Mile 54 1 of Green River	Hopkins
Liberty Water Works	Mile 0 9 of Hickman Creek (Lake Liberty)	Casey
City of Lafayette (Tennessee)	Mile 118.4 of Barren River	Monroe
Stanford Water Works	Mile 0.6 of UT to Green River (James C. Harris Reservoir)	Lincoln
Hardin County Water District #2	Nolin River at mile 75.3 (White Mills Spring)	Hardin
Green River Valley Water District	Mile 240 6 of Green River	Hart
Scottsville Municipal Water Works	Mile 88 6 of Barren River (Barren River Lake)	Allen
Butler County Water System	Mile 143 8 of Green River	Butler
Edmonson County Water District	Mile 23 5 of Nolin River (Nolin Reservoir)	Grayson
Columbia Utilities Commission	Mile 317 5 of Green River (Green River Reservoir)	Adair
Henderson Water & Sewer Department	From UT at mile 0.6 to Grane Creek	Webster
Webster Cnty Water District	Mile 47.5 of Green River	Webster
Hodgenville Water Works	Mile 0 3 of UT at mile 8.1 of North Fork Nolin River (Salem Lake)	Larue
Grayson County Water District	Mile 97.7 of Rough River (Rough River Reservoir)	Grayson
Lower Cumberland River Basin		
Kentucky State Penitentiary	Mile 40 2 of Cumberland River (Lake Barkley)	Lyon
Hopkinsville Water Environmental Authority	Mile 14 2 of North Fork Little River	Christian

Table B: SURFACE WATER INTAKES FOR DOMESTIC WATER SUPPLY USE		
Eddyville Municipal Water Works	Mile 1.5 of Knob Creek (Lake Barkley)	Lyon
Princeton Water Department	Mile 41.9 of Cumberland River (Lake Barkley)	Lyon
Kuttawa Municipal Water Plant	Mile 37.9 of Cumberland River (Lake Barkley)	Lyon
Barkley Lake Water Distrct	Mile 0.7 of Hopson Creek (Lake Barkley)	Trigg
Crittenden-Livingston Co Water District	Mile 14.0 of Cumberland River	Livingston
Hopkinsville Water Environmental Authority	From Hopkinsville Stone Quarry No. 1 (South Quarry) adjacent to North Fork Little River at mile 14 8	Christian
Cadiz Water Company	Mile 13.5 of Little River	Trigg
Hopkinsville Water Environmental Authority	Hopkinsville Stone Quarry No 2 (North Quarry) adjacent to White Creek at mile 0 2	Christian
TVA-Land Between The Lakes, Wrangler	Mile 1 0 on UT of Lick Creek at mile1.1	Trigg
Eddyville Municipal Water Works	Mile 40.2 of Cumberland River (Lake Barkley)	Lyon
Tradewater River Basin		
Providence Water Works	Mile 0 3 of Owens Creek (New Providence City Lake)	Webster
Madisonville Municipal Water Works	Mile 6 3 of Greasy Creek (Lake Pewee).	Hopkins
Earlington Water Works	Mile 0.2 of UT to Clear Creek at mile 26 5 (Loch Mary Reservoir)	Hopkins
Dawson Springs City Water & Sewer	Mile 0 1 of Piney Creek (Lake Beshear)	Caldwell
Providence Municipal Water Works	Mile 41.3 of Tradwater River	Webster
Ohio River Basin (Main Stem And Minor Tributaries [Note: river miles follow the USGS convention of starting mileage beginning at Pittsburgh, PA and ending at river mouth])		
Maysville Utility Commission	Mile 408 5 of Ohio River	Mason
Ashland Municipal Water Works	Mile 319.68 of Ohio River	Boyd
Northern Ky Water Service District - Newport Plant	Mile 463.6 of Ohio River	Campbell
Paducah Water Works	Mile 935.6 of Ohio River	McCracken
Louisville Water Company /ZPS A	Mile 600 6 of Ohio River	Jefferson
Henderson Water & Sewer Department	Mile 803 6 of Ohio River	Henderson

Table B: SURFACE WATER INTAKES FOR DOMESTIC WATER SUPPLY USE		
Northern Ky Water Service District Plant B	Mile 462.7 of Ohio River	Campbell
Morganfield Municipal Water Works	Mile 840.0 of Ohio River	Union
Russell Water Plant	Mile 327.7 of Ohio River	Greenup
Marion Municipal Water Works	Mile 26 4 of Crooked Creek (City Lake)	Crittenden
US Army Ft Knox A	Mile 8 6 of Otter Creek	Meade

Table B: SURFACE WATER INTAKES FOR DOMESTIC WATER SUPPLY USE		
Louisville Water Company BEPWTP B	Mile 594 7 of Ohio River	Jefferson
Sturgis Municipal Water Works	Mile 871.4 of Ohio River	Union

(3) Exceptions to specific criteria in 401 KAR 10 031[~~5.031~~] that apply to particular surface waters are shown in Table C [~~the tables of surface water use designations~~] in this section. All other criteria in 401 KAR 10 031[~~5.031~~] applicable to the listed use designations shall apply to these surface waters.

Table C: SURFACE WATER USE DESIGNATIONS				
Stream	Zone	County	Use Designation	Exceptions toSpecific Criteria
BIG SANDY RIVER BASIN				
Hobbs Fork of Pigeonroost Fork of Wolf Creek	Mouth to Headwaters	Martin	WAH, PCR, SCR, OSRW	
Lower Pigeon Branch of Elkhorn Creek	Left Fork to Headwaters	Pike	WAH, PCR, SCR, OSRW	
Paint Creek of Levisa Fork	River Mile 8 3 (Paintsville Lake Dam) to Levisa Fork	Johnson	CAH, PCR, SCR	
Paintsville	Entire reservoir	Johnson	WAH, CAH, PCR, SCR	
Russell Fork of Levisa Fork of Big Sandy River	Clinch Field RR Yard off HWY 80 to Virginia State Line	Pike	WAH, PCR, SCR, OSRW	
Toms Branch of Elkhorn Creek	Mouth to Headwaters	Pike	WAH, PCR, SCR, OSRW	
Unidentified Tributary of Hobbs Fork	Hobbs Fork of Pigeonroost Fork to Headwaters	Martin	WAH, PCR, SCR, OSRW	
LITTLE SANDY RIVER BASIN				
Arabs Fork of Big Sinking Creek	Clay Fork to Headwaters	Elliott	WAH, PCR, SCR, OSRW	
Big Caney Creek	Source to Grayson Lake	Elliott/ owan	CAH, PCR, SCR, OSRW	
Big Sinking Creek of Little Sandy River	SR 986 to Clay Fork and Arab Fork	Carter/ Elliott	WAH, PCR, SCR, OSRW	
Laurel Creek of Little Sandy River	Carter School Rd Bridge to Little Sandy River	Elliott/ Rowan	CAH, PCR, SCR,	
Laurel Creek of Little Sandy River	Carter School Rd Bridge to Headwaters	Elliott/ Rowan	CAH, PCR, SCR, OSRW	
Meadow Branch of Little Fork of Little Sandy River	Mouth to Headwaters	Elliott	WAH, PCR, SCR, OSRW	
Middle Fork of Little Sandy River	Mouth to Sheepskin Branch	Elliott	WAH, PCR, SCR, OSRW	
Nichols Fork of Little Fork of Little Sandy River	Green Branch to Headwaters	Elliott	WAH, PCR, SCR, OSRW	
LAKES AND RESERVOIRS				
Greenbo	Entire Reservoir	Greenup	WAH, CAH, PCR, SCR	
LICKING RIVER BASIN				
Blackwater Creek of Licking River	Eaton Creek to Greasy Fork	Morgan	WAH, PCR, SCR, OSRW	
Blanket Creek of Licking River	Mouth to Unidentified Tributary	Pendleton	WAH, PCR, SCR, OSRW	
Botts Fork of Brushy Fork of Licking River	Mouth to Landuse Change	Menifee	WAH, PCR, SCR, OSRW	
Bowman Creek	Mouth to Unidentified Tributary	Kenton	WAH, PCR, SCR, OSRW	

Table C: SURFACE WATER USE DESIGNATIONS				
Stream	Zone	County	Use Designation	Exceptions toS-pecific Criteria
Brushy Fork of Meyers Creek	Cave Run Lake Backwaters to Headwaters	Menifee	WAH, PCR, SCR, OSRW	
Brushy Fork of South Fork of Grassy Creek	Mouth to Headwaters	Pendleton	WAH, PCR, SCR, OSRW	
Bucket Branch of North Fork of Licking River	Mouth to Headwaters	Morgan	WAH, PCR, SCR, OSRW	
Cedar Creek of Licking River	Mouth to North Branch of Cedar Creek	Robertson	WAH, PCR, SCR, OSRW	
Craney Creek	Source to North Fork of Licking River	Rowan/ Morgan	CAH, PCR, SCR, OSRW	
Devils Fork of North Fork of Licking River	Mouth to Headwaters	Elliott/ Morgan	WAH, PCR, SCR, OSRW	
Flour Creek of Licking River	Mouth to Unidentified Tributary	Pendleton	WAH, PCR, SCR, OSRW	
Grovers Creek of Kincaid Creek	Kincaid Lake Backwaters to Unidentified Tributary	Bracken/ Pendleton	WAH, PCR, SCR, OSRW	
Licking River	River Mile 180.8 (Cave Run Lake Dam) to River Mile 175 6 (U S. Highway 60 Bridge)	Bath/ Rowan	CAH, PCR, SCR	
Licking River	River Mile 170 6 (Unnamed Road off Slatey Point Road) to River Mile 159 4 (Hwy 211)	Bath/ Rowan/ Fleming	WAH, PCR, SCR, OSRW	
Licking River	River Mile 117.6 (1.3 river miles above Fishtrap Creek) to River Mile 19 3 (Hwy 536 Bridge)	Kenton/ Campbell/ Pendleton/ Harrison/ Robertson/ Fleming	WAH, PCR, SCR, OSRW	
Minor Creek of Craney Creek	Basin	Morgan/ Rowan	CAH, PCR, SCR	
North Fork of Licking River	Cave Run Lake Backwaters to Devils Fork	Morgan	WAH, PCR, SCR, OSRW	
Sawyers Fork of Cruises Creek	Mouth to Headwaters	Kenton	WAH, PCR, SCR, OSRW	
Slabcamp Creek of Craney Creek of Licking River	Mouth to Headwaters	Rowan	CAH, PCR, SCR, OSRW	
Slate Creek of Licking River	Mouth to Mill Creek	Bath	WAH, PCR, SCR, OSRW	
South Fork Grassy Creek of Grassy Creek of Licking River	Mouth to Greasy Creek	Kenton/ Pendleton	WAH, PCR, SCR, OSRW	
Unidentified Tributary of Shannon Creek of North Fork of Licking River	Mouth to Headwaters	Mason	WAH, PCR, SCR, OSRW	
Welch Fork of Brushy Fork of Licking River	Mouth to First Road Crossing	Menifee	WAH, PCR, SCR, OSRW	
West Creek of Licking River	Mouth to Headwaters	Harrison/ Robertson	WAH, PCR, SCR, OSRW	
KENTUCKY RIVER BASIN				
Backbone Creek of Sixmile Creek of Kentucky River	Mouth to Scrabble Creek	Franklin/ Henry/ Shelby	WAH, PCR, SCR, OSRW	
Bear Branch of North Fork of Kentucky River	Above Sediment Pond to Headwaters	Perry	WAH, PCR, SCR, OSRW	
Big Double Creek of Red Bird River	Mouth to Headwaters	Clay	WAH, PCR, SCR, OSRW	
Bill Branch of Laurel Fork of Greasy Creek	Mouth to Right Fork and Left Fork Creek	Leslie	WAH, PCR, SCR, OSRW	
Billey Fork of Millers Creek	Land Use Change to Headwaters	Lee/Elliott	WAH, PCR, SCR, OSRW	
Bill Oak Branch of Left Fork of Buffalo Creek	Mouth to Headwaters	Owsley	WAH, PCR, SCR, OSRW	
Buffalo Creek of South Fork of Kentucky River	Mouth to Right Fork and Left Fork	Owsley	WAH, PCR, SCR, OSRW	
Cavanaugh Creek	South Fork of Station Camp Creek to Foxtown Rd	Jackson	WAH, PCR, SCR, OSRW	
Cherry Run of Boyd Run of North Elkhorn Creek	Mouth to Boyd Run	Scott	WAH, PCR, SCR, OSRW	
Chester Creek of Middle Fork of Red River	Mouth to Headwaters	Wolfe	WAH, PCR, SCR, OSRW	

Table C· SURFACE WATER USE DESIGNATIONS				
Stream	Zone	County	Use Designation	Exceptions toS-pecific Criteria
Chimney Top Creek of Red River	Basin	Wolfe	CAH, PCR, SCR	
Clear Creek of Kentucky River	Mouth to East Fork Clear Creek	Woodford	WAH, PCR, SCR, OSRW	
Clemons Fork of Buckhorn Creek	Mouth to Headwaters	Breathitt	WAH, PCR, SCR, OSRW	
Coles Fork of Buckhorn Creek	Mouth to Headwaters	Breathitt	WAH, PCR, SCR, OSRW	
Craig Creek of Kentucky River	Mouth to Unidentified Tributary	Woodford	WAH, PCR, SCR, OSRW	
Deep Ford Branch of Cutshin Creek	Above Pond to Headwaters	Leslie	WAH, PCR, SCR, OSRW	
Dix River	River Mile 3 1 (Herrington Lake Dam) to Kentucky River	Garrard/ Mercer	CAH, PCR, SCR	
Dog Fork of Swift Camp Creek	Basin	Wolfe	CAH, PCR, SCR	
Drennon Creek of Kentucky River	Fivemile Creek to Town Branch	Henry	WAH, PCR, SCR, OSRW	
East Fork of Indian Creek of Indian Creek	West Fork of Indian Creek to Indian Creek	Menifee	CAH, PCR, SCR	
East Fork of Indian Creek of Indian Creek of Red River River	West Fork of Indian Creek to Headwaters	Menifee	CAH, PCR, SCR, OSRW	
Elisha Creek of Red Bird River	Land Use Change (Residential) to the confluence of Right Fork and Middle Fork Elisha Creek	Leslie	WAH, PCR, SCR, OSRW	
Emily Run of Drennon Creek	Mouth to Unidentified Tributary	Henry	WAH, PCR, SCR, OSRW	
Evans Fork of Billey Fork of Millers Creek	Mouth to Headwaters	Estill	WAH, PCR, SCR, OSRW	
Falling Rock Branch of Clemons Fork of Buckhorn Creek	Mouth to Headwaters	Breathitt	WAH, PCR, SCR, OSRW	
Gilberts Creek of Kentucky River	Mouth to Unidentified Tributary	Anderson	WAH, PCR, SCR, OSRW	
Gladie Creek of Red River	Basin	Menifee	CAH, PCR, SCR	
Gladie Creek of Red River	Land Use Change to Long Branch	Menifee	CAH, PCR, SCR, OSRW	
Goose Creek of South Fork of Kentucky River	Mouth to Laurel Creek	Clay/Leslie	WAH, PCR, SCR, OSRW	
Griers Creek of Kentucky River	Kentucky River Backwaters to Unidentified Tributary	Woodford	WAH, PCR, SCR, OSRW	
Grindstone Creek of Kentucky River	Kentucky River Backwaters to Headwaters	Franklin	WAH, PCR, SCR, OSRW	
Hardwick Creek of Red River	Mouth to Little Hardwick Creek	Powell	WAH, PCR, SCR, OSRW	
Hell For Certain of Middle Fork of Red River	Mouth to Big Fork	Leslie	WAH, PCR, SCR, OSRW	
Hines Creek of Kentucky River	Kentucky River Backwaters to confluence with Unidentified Tributary	Madison	WAH, PCR, SCR, OSRW	
Honey Branch of Greasy Creek of Middle Fork of Kentucky River	Mouth to Headwaters	Leslie	WAH, PCR, SCR, OSRW	
Hopper Cave Branch of Cavanaugh Creek	Mouth to Headwaters	Jackson	WAH, PCR, SCR, OSRW	
Indian Creek of Eagle Creek	Mouth to Headwaters	Carroll	WAH, PCR, SCR, OSRW	
Indian Creek of Red River	River Mile 5 2 (0 3 river miles below Bear Branch) to River Mile 1.2 (East Fork of Indian Creek)	Menifee	CAH, PCR, SCR	
Indian Fork of Sixmile Creek of Kentucky River	Mouth to Headwaters	Shelby	WAH, PCR, SCR, OSRW	
John Carpenter Fork of Clemons Fork of Buckhorn Creek	Mouth to Headwaters	Breathitt	WAH, PCR, SCR, OSRW	
Katies Creek of Red Bird River	Mouth to Headwaters	Clay	WAH, PCR, SCR, OSRW	
Laurel Fork of Left Fork Buffalo Creek of Buffalo Creek	Cortland Fork to Big Branch	Owsley	WAH, PCR, SCR, OSRW	
Left Fork of Big Double Creek of Kentucky River	Mouth to Headwaters	Clay	WAH, PCR, SCR, OSRW	
Line Fork of North Fork of Kentucky River	Defeated Creek to Headwaters	Letcher	WAH, PCR, SCR, OSRW	
Little Middle Fork of Elisha Creek	Mouth to Headwaters	Clay	WAH, PCR, SCR,	

Table C: SURFACE WATER USE DESIGNATIONS				
Stream	Zone	County	Use Designation	Exceptions toS-pecific Criteria
of Red Bird River			OSRW	
Little Millseat Branch of Clemons Fork of Buckhorn Creek	Mouth to Headwaters	Breathitt	WAH, PCR, SCR, OSRW	
Little Sixmile Creek of Sixmile Creek of Kentucky River	Mouth to Headwaters	Henry	WAH, PCR, SCR, OSRW	
Lower Howard Creek of Kentucky River	Mouth to West Fork	Clark	WAH, PCR, SCR, OSRW	
Lulbegrud Creek of Red River	Mouth to Falls Branch	Clark/ Powell	WAH, PCR, SCR, OSRW	
Middle Fork of Kentucky River	Mouth to Upper Twin Creek	Lee/ Owsley	WAH, PCR, SCR, OSRW	
Middle Fork of Kentucky River	Hurts Creek to Greasy Creek	Leslie	WAH, PCR, SCR, OSRW	
Middle Fork of Red River	Source to River Mile 10 7 (0.7 river miles below Sinking Fork)	Powell	CAH, PCR, SCR	
Middle Fork of Red River	South Fork of Red River to Natural Bridge State Park Lake	Powell	CAH, PCR, SCR, OSRW	
Mikes Branch of Laurel Fork of Left Fork of Buffalo Creek	Mouth to Headwaters	Owsley	WAH, PCR, SCR, OSRW	
Mill Creek of Kentucky River	Upstream of Mouth to Headwaters	Owen	WAH, PCR, SCR, OSRW	
Millseat Branch of Clemons Fork of Buckhorn Creek	Mouth to Headwaters	Breathitt	WAH, PCR, SCR, OSRW	
Muddy Creek of Kentucky River	Elliston, Kentucky to Viney Creek	Madison	WAH, PCR, SCR, OSRW	
Musselman Creek of Eagle Creek	Mouth to Headwaters	Grant	WAH, PCR, SCR, OSRW	
Parched Corn Creek	Source to Red River	Wolfe	CAH, PCR, SCR	
Red River	River Mile 70.4 (SR 746) to River Mile 50 3 (0 1 Miles below Auxier Branch)	Menifee/ Wolfe	WAH, PCR, SCR, OSRW	
Red Bird River of South Fork of Kentucky River	Mouth to Big Creek	Clay	WAH, PCR, SCR, OSRW	
Right Fork of Buffalo Creek of Kentucky River	Mouth to Headwaters	Owsley	WAH, PCR, SCR, OSRW	
Right Fork of Elisha Creek of Redbird River	Mouth to Headwaters	Leslie	WAH, PCR, SCR, OSRW	
Roaring Fork of Lewis Fork of Buckhorn Creek	Mouth to Headwaters	Breathitt	WAH, PCR, SCR, OSRW	
Rock Lick Creek	Mouth to Headwaters	Jackson	WAH, PCR, SCR, OSRW	
Sand Ripple Creek of Kentucky River	Kentucky River Backwaters to Headwaters	Henry	WAH, PCR, SCR, OSRW	
Severn Creek of Kentucky River	Kentucky River Backwaters to North Fork of Severn Creek	Owen	WAH, PCR, SCR, OSRW	
Shaker Creek of Kentucky River	Near Mouth to Shawnee Run	Mercer	WAH, PCR, SCR, OSRW	
Shelly Rock Fork of Millseat Branch of Clemons Fork	Mouth to Headwaters	Breathitt	WAH, PCR, SCR, OSRW	
Sixmile Creek of Kentucky River	Little Sixmile Creek to Dam	Henry	WAH, PCR, SCR, OSRW	
South Fork of Kentucky River	Mouth to Sexton Creek	Owsley	WAH, PCR, SCR, OSRW	
South Fork of Red River	Mouth to Sandlick Fork	Powell	WAH, PCR, SCR, OSRW	
South Fork of Station Camp Creek of Kentucky River	Mouth to Rock Lick Creek	Jackson	WAH, PCR, SCR, OSRW	
Spruce Branch of Redbird River	Mouth to Headwaters	Clay	WAH, PCR, SCR, OSRW	
Station Camp Creek of Kentucky River	Landuse Change to South Fork of Station Camp Creek	Estill	WAH, PCR, SCR, OSRW	
Steeles Run of Elkhorn Creek	Mouth to Unidentified Tributary	Fayette	WAH, PCR, SCR, OSRW	
Steer Fork of War Fork of Station Camp Creek	Mouth to Headwaters	Jackson	CAH, PCR, SCR, OSRW	
Sturgeon Creek of Kentucky River	Duck Fork to Little Sturgeon Creek	Lee/ Owsley	WAH, PCR, SCR, OSRW	
Sugar Creek of Redbird River	Landuse Change to Headwaters	Leslie	WAH, PCR, SCR, OSRW	

Table C: SURFACE WATER USE DESIGNATIONS				
Stream	Zone	County	Use Designation	Exceptions toS-pecific Criteria
Swift Camp Creek	Source to Red River	Wolfe	CAH, PCR, SCR	
Unidentified Tributary of Cawood Branch of Beech Fork	Mouth to Headwaters	Leslie	WAH, PCR, SCR, OSRW	
Unidentified Tributary of Cedar Creek of Kentucky River	Mouth to Headwaters	Owen	WAH, PCR, SCR, OSRW	
Unidentified Tributary of Glenns Creek of Kentucky River	Mouth to Headwaters	Woodford	WAH, PCR, SCR, OSRW	
Unidentified Tributary of Jacks Creek of Kentucky River	Mouth to Headwaters	Madison	WAH, PCR, SCR, OSRW	
Unidentified Tributary of Kentucky River	Land Use Change to Headwaters	Franklin	WAH, PCR, SCR, OSRW	
Unidentified Tributary of Line Fork of North Fork of Kentucky River (LCW)	Mouth to Headwaters	Letcher	WAH, PCR, SCR, OSRW	
Sulphur Creek of Elkhorn Creek	Mouth to Headwaters	Franklin	WAH, PCR, SCR, OSRW	
War Fork of Station Camp Creek	Mouth to Headwaters	Jackson	CAH, PCR, SCR, OSRW	
War Fork of Station Camp Creek	Basin above River Mile 1 9 (0 3 river miles below Wind Cave Branch	Jackson	CAH, PCR, SCR	
Watches Fork of Laurel Fork of Left Fork of Buffalo Creek	Mouth to Headwaters	Owsley	WAH, PCR, SCR, OSRW	
Wolfpen Creek of Red River	Mouth to Headwaters	Menifee	WAH, PCR, SCR, OSRW	
LAKES AND RESERVOIRS				
Bert Combs	Entire Reservoir	Clay	WAH, CAH, PCR, SCR	
Fishpond	Entire Reservoir	Letcher	WAH, CAH, PCR, SCR	
Mill Creek	Entire Reservoir	Wolfe	WAH, CAH, PCR, SCR	
SALT RIVER BASIN				
Brashears Creek of Salt River	Guist Creek to Bullskin and Clear Creek	Shelby/ Spencer	WAH, PCR, SCR, OSRW	
Cedar Creek of Salt River	Mouth to Greens Branch	Bullitt	WAH, PCR, SCR, OSRW	
Chaplin River of Salt River	Thompson Creek to Comishville, KY	Washington	WAH, PCR, SCR, OSRW	
Doctors Fork of Chaplin River	Mouth to Begley Branch	Boyle	WAH, PCR, SCR, OSRW	
Guist Creek of Brashears Creek	Mouth to Jeptha Creek	Spencer	WAH, PCR, SCR, OSRW	
Harts Run of Wilson Creek of Rolling Fork of Salt River	Mouth to Headwaters	Bullitt	WAH, PCR, SCR, OSRW	
Indian Creek of Thompson Creek of Chaplin River of Salt River	Mouth to Unidentified Tributary	Mercer	WAH, PCR, SCR, OSRW	
Lick Creek of Long Lick Creek of Beech Fork of Salt River	Mouth to 0 1miles below Dam	Washington	WAH, PCR, SCR, OSRW	
Otter Creek of Rolling Fork of Salt River	River Mile 9.7 to Ohio River	Larue	CAH, PCR, SCR,	
Otter Creek of Rolling Fork of Salt River	Landuse Change to confluence of East Fork and Middle Fork Otter Creek	Larue	CAH, PCR, SCR, OSRW	
Overalls Creek of Wilson Creek of Rolling Fork of Salt River	Mouth to Headwaters of Middle Fork of Overalls Creek	Bullitt	WAH, PCR, SCR, OSRW	
Rolling Fork of Salt River	River Mile 62 5 (0 5 mi downstream of Otter Cr) to River Mile 53 6 (0 8 mi upstream of Stiles Rd Bridge)	Larue/ Nelson	WAH, PCR, SCR, OSRW	
Salt Lick Creek of Rolling Fork of Salt River	Mouth to Headwaters	Larue, Marion	WAH, PCR, SCR, OSRW	
Sulphur Creek of Chaplin River	Mouth to confluence of Cheese Lick and Brush Creek	Anderson/ Mercer/ Washington	WAH, PCR, SCR, OSRW	
Unidentified Tributary of Glens Creek of Chaplin River	Mouth to Headwaters	Washington	WAH, PCR, SCR, OSRW	
West Fork of Otter Creek of Rolling Fork of Salt River	Mouth to Headwaters	Larue	WAH, PCR, SCR, OSRW	
Wilson Creek of Rolling Fork of	Mouth to Headwaters	Bullitt/ Nel-	WAH, PCR, SCR,	

Table C: SURFACE WATER USE DESIGNATIONS				
Stream	Zone	County	Use Designation	Exceptions toS-pecific Criteria
Salt River		son	OSRW	
GREEN RIVER BASIN				
Barren River	River Mile 15.1 (Lock and Dam #1) to Green River	Butler/ Warren	WAH, PCR, SCR, OSRW	
Beaverdam Creek	Source to Green River	Edmonson	CAH, PCR, SCR, OSRW	
Cane Run of Nolin River	Nolin River Lake Backwaters to Headwaters	Hart	WAH, PCR, SCR, OSRW	
Caney Fork of Peter Creek	Mouth to Headwaters	Barren	WAH, PCR, SCR, OSRW	
Clifty Creek of Rough River	Barton Run to Western Kentucky Parkway	Grayson	WAH, PCR, SCR, OSRW	
Clifty Creek of Wolf Lick Creek	Little Clifty Creek to Sulphur Lick	Todd	WAH, PCR, SCR, OSRW	
Double Sink Spring	Basin Outside Mammoth Cave ational Park Boundary	Edmonson/ Barren	CAH, PCR, SCR, OSRW	
East Fork of Little Barren River	Red Lick Creek to Flat Creek	Metcalfe	WAH, PCR, SCR, OSRW	
Echo River	Basin Outside Mammoth Cave National Park Boundary	Edmonson	CAH, PCR, SCR, OSRW	
Ellis Fork of Damron Creek	Mouth to Headwaters	Adair/ Russell	WAH, PCR, SCR, OSRW	
Falling Timber Creek of Skaggs Creek	Landuse Change to Headwaters	Barren/ Metcalfe	WAH, PCR, SCR, OSRW	
Fiddlers Creek of North Fork of Rough River	Mouth to Headwaters	Breckinridge	WAH, PCR, SCR, OSRW	
Forbes Creek of Buck Creek of East Fork of Pond River	Mouth to Unidentified Tributary	Christian	WAH, PCR, SCR, OSRW	
Ganter Spring	Basin Outside Mammoth Cave National Park Boundary	Edmonson	CAH, PCR, SCR, OSRW	
Gasper River of Barren River	Clear Fork to Wigginton Creek	Logan/ Warren	WAH, PCR, SCR, OSRW	
Goose Creek of Green River	Mouth to Little Goose Creek	Casey/ Russell	WAH, PCR, SCR, OSRW	
Green River	River Mile 309.1 (Green River Lake Dam) to River Mile 210.55 (eastern Mammoth Cave National Park Boundary)	Hart/Taylor/ Green	WAH, PCR, SCR, OSRW	
Green River	River Mile 210 55 (eastern Mammoth Cave National Park Boundary) to River Mile 185 0 (western Mammoth Cave National Park Boundary)	Edmonson/ Hart	WAH, PCR, SCR, OSRW	
Green River	Downstream Mammoth Cave National Park Boundary to Lynn Camp Creek	Edmonson/ Hart	WAH, PCR, SCR, OSRW	
Green River	River Mile 170 2 (Lock and Dam #5) to River Mile 149 6 (1.0 river miles below Lock and Dam #4)	Butler/ Warren	WAH, PCR, SCR, OSRW	
Halls Creek of Rough River	Unidentified Tributary to Headwaters	Ohio	WAH, PCR, SCR, OSRW	
Lick Creek of West Fork of Drakes Creek	Mouth to Headwaters	Simpson	CAH, PCR, SCR, OSRW	
Linders Creek of Rough River	Mouth to Sutzer Creek	Hardin	WAH, PCR, SCR, OSRW	
Little Beaverdam Creek of Green River	Mouth to SR 743	Edmonson/ Warren	WAH, PCR, SCR, OSRW	
Little Short Creek of Rough River	Mouth to Headwaters	Grayson	WAH, PCR, SCR, OSRW	
Lynn Camp Creek	Source to Green River	Hart	CAH, PCR, SCR	
Lynn Camp Creek of Green River	Mouth to Lindy Creek	Hart	CAH, PCR, SCR, OSRW	
McFarland Creek of West Fork of Pond River	Grays Branch to Unidentified Tributary	Christian	WAH, PCR, SCR, OSRW	
McCoy Spring	Basin Outside Mammoth Cave National Park Boundary	Hart	CAH, PCR, SCR, OSRW	
Meeting Creek of Rough River	Little Meeting Creek to Petty Branch	Grayson/ Hardin	WAH, PCR, SCR, OSRW	
Mile 205 7 Spring	Basin Outside Mammoth Cave National Park Boundary	Hart	CAH, PCR, SCR, OSRW	
Muddy Creek of Caney Creek of	Landuse Change to Headwaters	Ohio	WAH, PCR, SCR,	

Table C: SURFACE WATER USE DESIGNATIONS				
Stream	Zone	County	Use Designation	Exceptions toS-pecific Criteria
Rough River			OSRW	
Nolin River	River Mile 7.8 (Nolin Lake Dam) to Green River	Edmonson	CAH,WAH, PCR, SCR	
North Fork of Rough River	Buffalo Creek to Reservoir Dam	Breckı-nridge	WAH, PCR, SCR, OSRW	
Peter Creek of Barren River	Caney Fork to Dry Fork	Barren	WAH, PCR, SCR, OSRW	
Pike Spring	Basin Outside Mammoth Cave National Park Boundary	Edmonson	CAH, PCR, SCR, OSRW	
Pond Run of Rough River	Landuse Change to Headwaters	Breckı-nridge/Ohio	WAH, PCR, SCR, OSRW	
Rough River	Linders Creek to Vertrees Creek	Hardin	WAH, PCR, SCR, OSRW	
Rough River	River Mile 90 4 (Rough River Lake Dam) to River Mile 89 6	Ohio/ Gray-son	CAH,WAH, PCR, SCR	
Rough River	River Mile 74 8 (Hwy 54 Bridge) to River Mile 74 2	McLean/ Ohio	CAH, PCR, SCR	
Roundstone Creek of Nolin River	Source to Hwy 1140 (River Mile 3 8	Hart	CAH, PCR, SCR	
Running Spring	Basin Outside Mammoth Cave National Park Boundary	Edmonson	CAH, PCR, SCR, OSRW	
Russell Creek of Green River	Mouth to Columbia WWTP	Green/ Adair	WAH, PCR, SCR, OSRW	
Russell Creek of Green River	Reynolds Creek to confluence with Hudson Creek and Mount Olive Creek	Adair, Rus-sell	WAH, PCR, SCR, OSRW	
Sixes Creek of Indian Camp Creek	Wild Branch to Headwaters	Ohio	WAH, PCR, SCR, OSRW	
Suds Spring	Basin Outside Mammoth Cave National Park Boundary	Hart/ Bar-ren	CAH, PCR, SCR, OSRW	
Sulphur Branch of Alexander Creek	Mouth to Headwaters	Edmonson	WAH, PCR, SCR, OSRW	
Thompson Branch	Webb Branch to Tennessee State Line	Simpson	WAH, PCR, SCR, OSRW	
Trammel Fork of West Fork of Drakes Creek	River Mile 30 6 (Kentucky/Tennessee State Line) to Hwy 31E (River Mile 23 8)	Allen	CAH, PCR, SCR,	
Trammel Fork of West Fork of Drakes Creek	Mouth to Tennessee State Line	Allen/ Warren	CAH, PCR, SCR, OSRW	
Turnhole Spring	Basin Outside Mammoth Cave National Park Boundary	Edmonson/ arren	CAH, PCR, SCR, OSRW	
Underground River System	Mammoth Cave National Park	Edmonson/ Hart/Barren	CAH, PCR, SCR, OSRW	
Unidentified Tributary of Green River	Landuse Change to Headwaters	Adair	WAH, PCR, SCR, OSRW	
Unidentified Tributary of White Oak Creek	Hovious Rd Crossing to SR 76	Adair	WAH, PCR, SCR, OSRW	
West Fork of Pond River	Unidentified Tributary to East Branch of Pond River	Christian	WAH, PCR, SCR, OSRW	
TRADEWATER RIVER BASIN				
East Fork of Flynn Fork of Trade-water River	Landuse Change to Headwaters	Caldwell	WAH, PCR, SCR, OSRW	
Piney Creek of Tradewater River	Lake Beshear Backwaters to Headwaters	Caldwell, Christian	WAH, PCR, SCR, OSRW	
Sandlick Creek of Tradewater River	Camp Creek to Headwaters	Christian	WAH, PCR, SCR, OSRW	
Tradewater River	Dripping Springs Branch to Buntin Lake Dam	Christian	WAH, PCR, SCR, OSRW	
Unidentified Tributary of Piney Creek of Tradewater River	Mouth to Headwaters	Caldwell	WAH, PCR, SCR, OSRW	
Unidentified Tributary of Sandlick Creek of Tradewater River	Mouth to Headwaters	Christian	WAH, PCR, SCR, OSRW	
LOWER CUMBERLAND RIVER BASIN				
Casey Creek	Source to Little River	Trigg	CAH, PCR, SCR	
Crooked Creek of Cumberland River	Energy Lake Backwaters to Headwaters	Trigg	WAH, PCR, SCR, OSRW	
Donaldson Creek of Cumberland River	Craig Branch to Unidentified Tributary	Trigg	WAH, PCR, SCR, OSRW	
Elk Creek of Red River of Cumber-land River	Tennessee State Line to Dry Branch	Todd	WAH, PCR, SCR, OSRW	

Table C· SURFACE WATER USE DESIGNATIONS				
Stream	Zone	County	Use Designation	Exceptions toS-pecific Criteria
Skinframe Creek	Source to Livingston Creek	Lyon	CAH, PCR, SCR	
Sugar Creek of Cumberland River	Lick Creek to Unidentified Tributary	Livingston	WAH, PCR, SCR, OSRW	
Sulphur Spring Creek	Source to Red River	Simpson	CAH, PCR, SCR	
West Fork of Red River	River Mile 32 2 to Kentucky/Tennessee State Line (River Mile 14 5)	Christian	CAH, PCR, SCR, OSRW	
Whipporwill Creek	Source to Red River	Logan/Todd	WAH, PCR, SCR, OSRW	
UPPER CUMBERLAND RIVER BASIN				
Acorn Fork of Stinking Creek	Basin above River Mile 1.0	Knox	WAH, PCR, SCR, OSRW	
Adams Branch of Pigeon Roost Creek	Basin	Whitley	WAH, PCR, SCR, OSRW	
Archers Creek of Cumberland River	Basin	Whitley	WAH, PCR, SCR, OSRW	
Bad Branch of Poor Fork of Cumberland River	Basin	Letcher	CAH, PCR, SCR, OSRW	
Bark Camp Creek of Cumberland River	Basin	Whitley	CAH, PCR, SCR, OSRW	
Barren Fork of Indian Creek	Basin	McCreary	CAH, PCR, SCR, OSRW	
Beaver Creek of Cumberland River	Basin	McCreary	CAH, PCR, SCR, OSRW	
Bee Lick Creek of Brushy Creek of Buck Creek	Mouth to Warren Branch	Pulaski	WAH, PCR, SCR, OSRW	
Bens Fork of Little Clear Creek	Basin	Bell	WAH, PCR, SCR, OSRW	
Big Branch of Marsh Creek	Basin above River Mile 0.8	McCreary	WAH, PCR, SCR, OSRW	
Big Lick Branch of Cumberland River	Basin	Pulaski	WAH, PCR, SCR, OSRW	
Blacksnake Branch of Brownies Creek	Basin	Bell	WAH, PCR, SCR, OSRW	
Breedens Creek of Clover Fork of Cumberland River	Basin	Harlan	WAH, PCR, SCR, OSRW	
Brices Creek of Road Fork of Stinking Creek	Basin	Knox	WAH, PCR, SCR, OSRW	
Brownies Creek of Cumberland River	Basin above Blacksnake Branch	Harlan	WAH, PCR, SCR, OSRW	
Brush Creek of Roundstone Creek	Wolf Creek to Reemergence of Sinking Creek	Rockcastle	WAH, PCR, SCR, OSRW	
Brushy Creek of Buck Creek	Mouth to Headwaters	Pulaski	WAH, PCR, SCR, OSRW	
Buck Creek of Cumberland River	0.8 river mile upstream of confluence of Hurricane Creek to River Mile 11 7 (Backwaters of Lake Cumberland)	Pulaski	WAH, PCR, SCR, OSRW	
Buck Creek of Clear Fork of Cumberland River	Basin	Whitley	WAH, PCR, SCR, OSRW	
Bucks Branch of Jellico Creek	Basin	Whitley	WAH, PCR, SCR, OSRW	
Buffalo Creek of Laurel Fork of Clear Fork of Cumberland River	Basin above Kentucky/ Tennessee State Line (River Mile 2 0)	Whitley	WAH, PCR, SCR, OSRW	
Bunches Creek of Cumberland River	Basin	Whitley	CAH, PCR, SCR, OSRW	
Campbell Branch of Jellico Creek	Basin	Whitley	WAH, PCR, SCR, OSRW	
Cane Creek of Rockcastle River	Mouth to Headwaters	Laurel	WAH, PCR, SCR, OSRW	
Caney Creek of Left Fork of Straight Creek	Basin	Bell	WAH, PCR, SCR, OSRW	
Cannon Creek of Yellow Creek	Basin above Cannon Creek Lake	Bell	WAH, PCR, SCR, OSRW	
Clifty Creek of Brushy Creek of Buck Creek	Mouth to Rocky Branch	Pulaski	WAH, PCR, SCR, OSRW	
Clover Bottom Creek	River Mile 1 4 to Horselick Creek	Jackson	CAH, PCR, SCR	
Cogur Fork of Indian Creek	Basin	McCreary	CAH, PCR, SCR,	

Table C: SURFACE WATER USE DESIGNATIONS				
Stream	Zone	County	Use Designation	Exceptions toS-pecific Criteria
			OSRW	
Coles Branch of Road Fork of Stinking Creek	Basin	Knox	WAH, PCR, SCR, OSRW	
Colliers Creek of Poor Fork of Cumberland River	Basin	Bell	WAH, PCR, SCR, OSRW	
Criscillis Branch of Jellico Creek	Basin	Whitley	WAH, PCR, SCR, OSRW	
Cumberland River	River Mile 574 6 (Summer Shoals) to River Mile 558.7 (Headwaters of Lake Cumberland)	McCreary/ Whitley	WAH, PCR, SCR, OSRW	
Cumberland River	River Mile 460.9 (Lake Cumberland Dam) to Kentucky/Tennessee State Line (River Mile 385 5)	Clinton, Cumberland, Russell, Monroe	CAH, PCR, SCR	
Davis Branch of Little Yellow Creek	Basin	Bell	WAH, PCR, SCR, OSRW	
Dog Slaughter Creek of Cumberland River	Basin	Whitley	CAH, PCR, SCR, OSRW	
Dolen Branch of Rock Creek	Basin	McCreary	WAH, PCR, SCR, OSRW	
Eagle Creek of Cumberland River	Basin	McCreary	WAH, PCR, SCR, OSRW	
FishTrap Branch	Basin above River Mile 0.3 (Lake Cumberland backwaters)	McCreary	WAH, PCR, SCR, OSRW	
Four Mile Creek of Cumberland River	Basin above River Mile 2 5	Bell	WAH, PCR, SCR, OSRW	
Four Mile Run of Bennetts Fork of Yellow Creek Bypass	Basin above River Mile 1 0	Bell	WAH, PCR, SCR, OSRW	
Fugitt Creek of Clover Fork of Cumberland River	Basin	Harlan	CAH, PCR, SCR, OSRW	
Hale Fork of Road Fork of Stinking Creek	Basin	Knox	WAH, PCR, SCR, OSRW	
Hawk Creek of Rockcastle River	Basin	Laurel	CAH, PCR, SCR	
Hinkle Branch of Road Fork of Stinking Creek	Basin	Knox	WAH, PCR, SCR, OSRW	
Honeycutt Branch of Turkey Creek of Stinking Creek	Basin	Knox	WAH, PCR, SCR, OSRW	
Horse Lick Creek	River Mile 12 3 (Clover Bottom Creek) to Middle Fork of Rockcastle River	Jackson/ Rockcastle	WAH, PCR, SCR, OSRW	
Howards Creek of Illwill Creek of Wolf River	Dale Hollow Reservoir Backwaters to Headwaters	Clinton	WAH, PCR, SCR, OSRW	
Hunting Shirt Branch of Richland Creek	Basin	Knox	WAH, PCR, SCR, OSRW	
Indian Creek of Cumberland River	Laurel Fork to Barren Fork	McCreary	WAH, PCR, SCR, OSRW	
Indian Creek of Cumberland River	Basin above and including Barren Fork	McCreary	CAH, PCR, SCR, OSRW	
Jackie Branch of Bark Camp Creek	Mouth to Headwaters	Whitley	CAH, PCR, SCR, OSRW	
Jellico Creek of Cumberland River	River Mile 22.5 (confluence with Capuchin Creek) to River Mile 25 3 (Kentucky/Tennessee State Line)	McCreary	WAH, PCR, SCR, OSRW	
Jennys Branch of Laurel Fork of Marsh Creek	Basin	McCreary	WAH, PCR, SCR, OSRW	
Kelly Branch of Clover Fork of Cumberland River	Basin	Harlan	WAH, PCR, SCR, OSRW	
Kennedy Creek of Little South Fork of Cumberland River	River Mile 1 0 to Little South Fork of Cumberland River	Wayne	WAH, PCR, SCR, OSRW	
Kilburn Fork of Indian Creek	Basin	McCreary	WAH, PCR, SCR, OSRW	
Laurel Creek of Marsh Creek	River Mile 9.1 to River Mile 3 1 (Jennys Branch)	McCreary	CAH, PCR, SCR, OSRW	
Laurel Fork of Clear Fork of Cumberland River	Basin above River Mile 16 0 (John Partin Road off Hwy 190)	Bell	WAH, PCR, SCR, OSRW	

Table C: SURFACE WATER USE DESIGNATIONS				
Stream	Zone	County	Use Designation	Exceptions toS-pecific Criteria
Laurel Fork of Clear Fork of Cumberland River	River Mile 16 0 (John Partin Road off Hwy190) to River Mile 4 25 (Kentucky/Tennessee State Line)	Whitley	WAH, PCR, SCR, OSRW	
Laurel Fork of Indian Creek	Basin	McCreary	WAH, PCR, SCR, OSRW	
Laurel Fork of Middle Fork Rockcastle River	Source to Middle Fork of Rockcastle River	Jackson	WAH, PCR, SCR, OSRW	
Laurel River	Laurel River Lake Dam (River Mile 2 1) to River Mile 0 9	Laurel, Whitley	CAH, PCR, SCR	
Lick Fork of Bennetts Fork of Yellow Creek	Basin	Bell	WAH, PCR, SCR, OSRW	
Little Popular Creek of Cumberland River	Basin above Hubbs Creek	Knox	WAH, PCR, SCR, OSRW	
Little South Fork of Cumberland River	River Mile 35 6 (Confluence with Langham Branch) to RiverMile 4.4 (backwaters of Lake Cumberland)	Wayne, McCreary	WAH, PCR, SCR, OSRW	
Long Branch of Left Fork of Straight Creek	Basin	Bell	WAH, PCR, SCR, OSRW	
Looney Creek of Poor Fork of Cumberland River	Basin above River Mile 5.3 (Lynch City Limits)	Harlan	CAH, PCR, SCR	
Marsh Creek	Basin above River Mile 24 6 (Confluence with Murphy Creek) (within Kentucky)	McCreary	WAH, PCR, SCR, OSRW	
Marsh Creek	River Mile 24 0 (Confluence with Murphy Creek) to confluence with Cumberland River	McCreary	WAH, PCR, SCR, OSRW	
Martins Fork	Basin above River Mile 34.5 (Cumberland Gap National Historical Park Boundary)	Bell	CAH, PCR, SCR	
Martins Fork	River Mile 31.4 (Cumberland Gap National Historical Park Boundary) to River Mile 27 2	Bell, Harlan	CAH, PCR, SCR, OSRW	
McFarland Creek of Cumberland River	Little McFarland Creek to Spring Branch	Monroe	WAH, PCR, SCR, OSRW	
Meadow Fork of Franks Creek	Basin	Letcher	WAH, PCR, SCR, OSRW	
Meshack Creek of Cumberland River	Mouth to Pitcock Branch	Monroe	WAH, PCR, SCR, OSRW	
Middle Fork of Rockcastle River	River Mile 7 9 (confluence of Indian Creek and Laurel Fork) to confluence of the Middle Fork and South Fork of Rockcastle River)	Jackson	WAH, PCR, SCR, OSRW	
Mill Branch of Stinking Creek	Basin	Knox	WAH, PCR, SCR, OSRW	
Mill Creek of Straight Creek	Basin	Bell	WAH, PCR, SCR, OSRW	
Mill Creek of Cumberland River	Basin	McCreary	WAH, PCR, SCR, OSRW	
Moores Creek of Stinking Creek	Basin	Knox	WAH, PCR, SCR, OSRW	
Mud Creek of Clear Fork of Cumberland River	Basin above River Mile 6.5 (0.3 river miles above Siler Cemetery Road Bridge)	Whitley	WAH, PCR, SCR, OSRW	
Mud Camp Creek of Cumberland River	Mouth to Collins Branch	Cumberland	WAH, PCR, SCR, OSRW	
Mud Camp Creek of Cumberland River	Unidentified Tributary to Headwaters	Cumberland/ Monroe	WAH, PCR, SCR, OSRW	
Mud Lick of Stinking Creek	Basin	Knox	WAH, PCR, SCR, OSRW	
Ned Branch of Rockcastle River	Basin	Laurel	WAH, PCR, SCR, OSRW	
Otter Creek of Cumberland River	Lake Cumberland Backwaters to Carpenter Fork	Wayne	WAH, PCR, SCR, OSRW	
Patterson Creek of Cumberland River	Basin above River Mile 7.3 (confluence with Rose Creek)	Whitley	WAH, PCR, SCR, OSRW	
Poor Fork of Cumberland River	Franks Creek to River Mile 48.1 (at Joseph Road off of Hwy 932)	Letcher	WAH, PCR, SCR, OSRW	
Poor Fork of Cumberland River	Basin above River Mile 48.1 (at Joseph Road off of Hwy 932)	Letcher	CAH, PCR, SCR, OSRW	
Presley House Branch of Poor	Mouth to Headwaters	Letcher	WAH, PCR, SCR,	

Table C· SURFACE WATER USE DESIGNATIONS				
Stream	Zone	County	Use Designation	Exceptions toS-pecific Criteria
Fork of Cumberland River			OSRW	
Puncheoncamp Branch of Rock Creek of South Fork of Cumberland River	Mouth to Headwaters	McCreary	WAH, PCR, SCR, OSRW	
Richland Creek of Cumberland River	Basin above River Mile 15 8 (0 5 stream miles above Hubbard Branch)	Knox	WAH, PCR, SCR, OSRW	
Roaring Fork of Stinking Creek	Basin	Knox	WAH, PCR, SCR, OSRW	
Rock Creek of Little South Fork of Cumberland River	Kentucky/Tennessee State Line (River Mile 21 5) to White Oak Creek	McCreary	CAH, PCR, SCR, OSRW	
Rock Creek of Jellico Creek	Basin	McCreary	WAH, PCR, SCR, OSRW	
Rockcastle River	River Mile 49 8 (confluence of Middle Fork and South Fork Rockcastle River) to River Mile 8 5 (backwaters of Lake Cumberland)	Laurel/ Pulaski	WAH, PCR, SCR, OSRW	
Ross Branch of Jellico Creek	Basin	Whitley	WAH, PCR, SCR, OSRW	
Roundstone Creek of Rockcastle River	River Mile 26 3 (Interstate I-75) to River Mile 13 4 (confluence of Renfro Creek)	Rockcastle	WAH, PCR, SCR, OSRW	
Ryans Creek of Jellico Creek	Basin	Whitley	WAH, PCR, SCR, OSRW	
Sanders Creek of Cumberland River	Basin	Whitley	WAH, PCR, SCR, OSRW	
Shillalah Creek of Clear Fork of Yellow Creek	Source to Cumberland Gap National Historical Park Boundary	Bell	CAH, PCR, SCR, OSRW	
Shillalah Creek of Clear Fork of Yellow Creek	Cumberland Gap National Historcal Park Boundary to Mouth	Bell	WAH, PCR, SCR, OSRW	
Shut-In Branch of Jellico Creek	Basin	McCreary	WAH, PCR, SCR, OSRW	
Sinking Creek	Source to Rockcastle River	Laurel	WAH, PCR, SCR, OSRW	
Sims Fork of Left Fork of Straight Creek	Basin	Bell	WAH, PCR, SCR, OSRW	
Smith Creek of Franks Creek	Basin	Letcher	WAH, PCR, SCR, OSRW	
South Fork of Cumberland River	River Mile 54.1 (Kentucky /Tennessee State Line) to River Mile 45 7 (Blue Heron)	McCreary	WAH, PCR, SCR, OSRW	
South Fork of Rockcastle River	River Mile 2.1 to White Oak Creek	Laurel	WAH, PCR, SCR, OSRW	
South Fork of Rockcastle River	River Mile 2.1 to Rockcastle River	Rockcastle	WAH, PCR, SCR, OSRW	
Stevenson Branch of Bennetts Fork of Yellow Creek	Basin	Bell	WAH, PCR, SCR, OSRW	
Sulphur Creek of Wolf River of Obey River	Dale Hollow Reservoir Backwaters to Headwaters	Clinton	WAH, PCR, SCR, OSRW	
Trace Branch of Stinking Creek	Basin	Knox	WAH, PCR, SCR, OSRW	
Trammel Fork of Marsh Creek	Basin	McCreary	WAH, PCR, SCR, OSRW	
Turkey Creek of Stinking Creek	Basin	Knox	WAH, PCR, SCR, OSRW	
Tyes Fork of Bennetts Fork of Patterson Creek	Basin	Whitley	WAH, PCR, SCR, OSRW	
Unidentified Tributary (across from Hemlock Grove) of Rock Creek of South Fork of Cumberland River	Mouth to Headwaters	McCreary	WAH, PCR, SCR, OSRW	
Unidentified Tributary (RMI 17 0 of Rock Creek) of Rock Creek of South Fork of Cumberland River	Mouth to Headwaters	McCreary	WAH, PCR, SCR, OSRW	
Watts Branch of Rock Creek	Basin	McCreary	WAH, PCR, SCR, OSRW	
Watts Creek of Cumberland River	Basin above Camp Blanton Lake	Harlan	WAH, PCR, SCR, OSRW	
White Oak Creek of Rock Creek	Basin	McCreary	WAH, PCR, SCR, OSRW	
White Oak Creek of Sinking Creek	Basin above River Mile 1.2 (includes Little White Oak Creek)	Laurel	CAH, PCR, SCR	

Table C: SURFACE WATER USE DESIGNATIONS				
Stream	Zone	County	Use Designation	Exceptions toS-pecific Criteria
Wood Creek of Rockcastle River	River Mile 4 0 (Wood Creek Lake Dam) to Hazel Patch Creek	Laurel	CAH, PCR, SCR	
Youngs Creek of Cumberland River	Basin	Whitley	WAH, PCR, SCR, OSRW	
LAKES AND RESERVOIRS				
Beulah (=Tyner)	Entire Reservoir	Jackson	WAH, CAH, PCR, SCR	
Cannon Creek	Entire Reservoir	Bell	WAH, CAH, PCR, SCR	
Laurel River	Entire Reservoir	Laurel/ Whitley	WAH, CAH, PCR, SCR	
Wood Creek	Entire Reservoir	Laurel	WAH, CAH, PCR, SCR	
TENNESSEE RIVER BASIN				
Blood River of Kentucky Lake (Tennessee River)	McCullough Fork to Tennessee State Line	Calloway	WAH, PCR, SCR, OSRW	
Clarks River of Tennessee River	Persimmon Slough to Middle Fork Creek	Marshall	WAH, PCR, SCR, OSRW	
Grindstone Creek of Kentucky Lake (Blood River of Tennessee River)	Kentucky Lake Backwaters to Headwaters	Calloway	WAH, PCR, SCR, OSRW	
Panther Creek of Kentucky Lake (Blood River of Tennessee River)	Kentucky Lake Backwaters to Headwaters	Calloway	WAH, PCR, SCR, OSRW	
Soldier Creek of West Fork of Clarks River	Mouth to South Fork of Soldier Creek	Marshall	WAH, PCR, SCR, OSRW	
Sugar Creek of Kentucky Lake (Tennessee River)	Kentucky Lake Backwaters to Buzzard Roost Road	Calloway	WAH, PCR, SCR, OSRW	
Sugar Creek of West Fork Clarks River	Mouth to Unnamed Reservoir	Graves	WAH, PCR, SCR, OSRW	
Tennessee River	River Mile 23.1 (Kentucky Lake Dam) to River Mile 12 4	Livingston/ McCracken/ Marshall	WAH, PCR, SCR, OSRW	
Trace Creek of West Fork of Clarks River	Mouth to Neeley Branch	Graves	WAH, PCR, SCR, OSRW	
Unidentified Tributary of Panther Creek of West Fork of Clarks River	Mouth to Headwaters	Graves	WAH, PCR, SCR, OSRW	
West Fork of Clarks River	Soldier Creek to Duncan Creek	Graves	WAH, PCR, SCR, OSRW	
Wildcat Creek of Kentucky Lake (Blood River of Tennessee River)	Ralph Wright Road Crossing to Headwaters	Calloway	WAH, PCR, SCR, OSRW	
OHIO RIVER BASIN (Main Stem and Minor Tributaries)				
Crooked Creek	Rush Creek to City Lake Dam	Crittenden	WAH, PCR, SCR, OSRW	
Doe Run Creek	Source to Hwy 1628 (River Mile 5 35)	Meade	CAH, PCR, SCR	
Double Lick Creek of Woolper Creek	Mouth to Headwaters	Boone	WAH, PCR, SCR, OSRW	
Garrison Creek	Mouth to Headwaters	Boone	WAH, PCR, SCR, OSRW	
Kinniconick Creek	McDowell Creek to Headwaters	Lewis	WAH, PCR, SCR, OSRW	
Little South Fork of Big South Fork	Land Use Change to Headwaters	Boone	WAH, PCR, SCR, OSRW	
Middle Fork of Massac Creek	Hines Road to Headwaters	McCracken	WAH, PCR, SCR, OSRW	
Ohio River	River Mile 848.0 to River Mile 850 0	Union	WAH, PCR, SCR, OSRW	
Ohio River	River Mile 859 0 to River Mile 861 0	Union	WAH, PCR, SCR, OSRW	
Ohio River	River Mile 865.0 to River Mile 867.0	Union	WAH, PCR, SCR, OSRW	
Ohio River	River Mile 923.5 to River Mile 926 0	Livingston	WAH, PCR, SCR, OSRW	
Ohio River	River Mile 927.0 to River Mile 930 0	Livingston	WAH, PCR, SCR, OSRW	
Ohio River	River Mile 940.7 to River Mile 943 3	McCracken	WAH, PCR, SCR, OSRW	
Ohio River	River Mile 948.2 to River Mile 949 5	McCracken	WAH, PCR, SCR, OSRW	

Table C: SURFACE WATER USE DESIGNATIONS				
Stream	Zone	County	Use Designation	Exceptions toSpecific Criteria
Ohio River	River Mile 960 0 to River Mile 962.7 (above Lock and Dam 53)	Ballard	WAH, PCR, SCR, OSRW	
Ohio River	River Mile 966 3 to River Mile 969.5	Ballard	WAH, PCR, SCR, OSRW	
Ohio River	River Mile 922.0 to River Mile 923 5 (Channel East of Towhead Island)	Livingston	WAH, PCR, SCR, OSRW	
Otter Creek	River Mile 9 7 to Ohio River	Meade	CAH, PCR, SCR	
Paddy's Run	Source to Ohio River	Jefferson	PCR, SCR	401 KAR 5:031, Section 2(1)(d) and 2(2) do not apply.
Second Creek	Ohio River Backwaters to Headwaters	Boone	WAH, PCR, SCR, OSRW	
Sinking Creek	Source to Hwy 259 (River Mile 3 8)	Breckinridge	CAH, PCR, SCR	
Unidentified Tributary of Big Sugar Creek	I-71 to Headwaters	Gallatin	WAH, PCR, SCR, OSRW	
Unidentified Tributary of (Blue) Spring Ditch	Mouth to Headwaters	Jefferson	MWAH	
Unidentified Tributary of Corn Creek	Mouth to Headwaters	Trimble	WAH, PCR, SCR, OSRW	
Unidentified Tributary of Massac Creek	Mouth to Headwaters	McCracken	WAH, PCR, SCR, OSRW	
West Fork of Massac Creek	SR 725 to Little Massac Creek	McCracken	WAH, PCR, SCR, OSRW	
White Oak Creek	River Mile 1.08 to Ohio River	Greenup	SCR	401 KAR 5:031, Section 2(1)(d) and 2(2) do not apply.
Yellowbank Creek	Ohio River Backwaters to Headwaters	Breckinridge	WAH, PCR, SCR, OSRW	
LAKES AND RESERVOIRS				
Metropolis	Entire Lake	McCracken	WAH, PCR, SCR, OSRW	
MISSISSIPPI RIVER BASIN (Main Stem and Minor Tributaries)				
Bayou de Chien	Source to River Mile 15.4	Hickman/ Graves	WAH, PCR, SCR, OSRW	
Cane Creek of Bayou de Chien	Basin	Graves	WAH, PCR, SCR, OSRW	
Jackson Creek of Bayou de Chein	Basin	Graves	WAH, PCR, SCR, OSRW	
Jackson Creek	Mouth to Headwaters	Graves	WAH, PCR, SCR, OSRW	
Mississippi River	River Mile 935 0 to River Mile 930 0	Carlisle	WAH, PCR, SCR, OSRW	
Mississippi River	River Mile 947 0 to River Mile 945 0	Carlisle	WAH, PCR, SCR, OSRW	
Obion Creek	Hurricane Creek to Little Creek	Hickman	WAH, PCR, SCR, OSRW	
Sand Creek of Bayou de Chein	Basin	Graves	WAH, PCR, SCR, OSRW	
South Fork of Bayou de Chien	Basin	Graves	WAH, PCR, SCR, OSRW	
Terrapin Creek	Tennessee State Line to Headwaters	Graves	WAH, PCR, SCR, OSRW	
LAKES AND RESERVOIRS				
Murphy's Pond	Entire Pond and Preserve Area	Hickman	WAH, PCR, SCR, OSRW	
Swan Pond	Entire Lake	Ballard	WAH, PCR, SCR, OSRW	

~~[SURFACE WATER USE DESIGNATIONS~~				
~~Water Body~~	~~Zone~~	~~County~~	~~Use Designation~~	~~Exceptions To Specific Criteria~~

BIG SANDY RIVER BASIN				
Big Sandy River	River Mile 26.8 to Ohio River	Boyd	WAH, PCR, SCR	
Hood Creek	Source to Wheeler Branch	Lawrence	WAH, PCR, SCR	
Levisa Fork of Big Sandy River	Kentucky-Virginia State Line to River Mile 147.5 (Headwaters of Fishtrap Lake)	Pike	WAH, PCR, SCR, DWS	
Levisa Fork of Big Sandy River	River Mile 126.6 (Fishtrap Lake Dam) to Big Sandy River	Lawrence	WAH, PCR, SCR, DWS	
Paint Creek of Levisa Fork	River Mile 8.3 (Paintsville Lake Dam) to Levisa Fork	Johnson	CAH, PCR, SCR	
Russell Fork of Big Sandy River	Kentucky-Virginia State Line (River Mile 15.9) to Levisa Fork	Pike	WAH, PCR, SCR, DWS	
Tug Fork of Big Sandy River	Kentucky-Virginia State Line (River Mile 94.0) to Big Sandy River	Lawrence	WAH, PCR, SCR, DWS	
LAKES AND RESERVOIRS				
Dewey	Entire reservoir	Floyd	WAH, PCR, SCR, DWS	
Fishtrap	Entire reservoir	Pike	WAH, PCR, SCR, DWS	
Paintsville	Entire reservoir	Johnson	WAH, CAH, PCR, SCR	
LITTLE SANDY RIVER BASIN				
Big Caney Creek	Source to Grayson Lake	Elliott	CAH, PCR, SCR	
Big Sinking Creek	River Mile 6.0 to Little Sandy River	Carter	WAH, PCR, SCR	
Laurel Creek	Source to Little Sandy River	Elliott	CAH, PCR, SCR	
Little Sandy River	Source to River Mile 71.1 (Headwaters of Grayson Lake)	Elliott	WAH, PCR, SCR, DWS	
Little Sandy River	River Mile 50.0 (Grayson Lake Dam) to Ohio River	Greenup	WAH, PCR, SCR, DWS	
LAKES AND RESERVOIRS				
Grayson	Entire Reservoir	Carter	WAH, PCR, SCR	
Greenbo	Entire Reservoir	Greenup	WAH, CAH, PCR, SCR, DWS	
TYGARTS CREEK BASIN				
Buffalo Creek	Source to Tygarts Creek	Carter	WAH, PCR, SCR	
Little White Oak Creek	Source to Tygarts Creek	Greenup	WAH, PCR, SCR	
Tygarts Creek	Source to Ohio River	Greenup	WAH, PCR, SCR, DWS	
White Oak Creek	Source to Tygarts Creek	Greenup	WAH, PCR, SCR	
LICKING RIVER BASIN				
Burning Fork	Basin	Magoffin	WAH, PCR, SCR	
Craney Creek	Source to North Fork of Licking River	Rowan/ Morgan	CAH, PCR, SCR	
Fleming Creek	Source to Licking River	Nicholas	WAH, PCR, SCR	
Licking River	Source to River Mile 218.2 (Headwaters of Cave Run Lake)	Morgan	WAH, PCR, SCR, DWS	
Licking River	River Mile 176.8 (Cave Run Lake Dam) to River Mile 160.6 (U.S. Highway 60 Bridge)	Bath/Rowan	CAH, PCR, SCR, DWS	
Licking River	River Mile 160.6 to River Mile 165.0	Bath/Rowan	WAH, PCR, SCR, DWS	
Licking River	River Mile 165.0 to River Mile 154.5	Bath/Rowan	WAH, PCR, SCR, OSRW	
Licking River	River Mile 154.5 to River Mile 115.0	Nicholas/ Bourbon	WAH, PCR, SCR, DWS	
Licking River	River Mile 115.0 to River Mile 18.9	Kenton/ Campbell	WAH, PCR, SCR, DWS, OSRW	
Licking River	River Mile 18.9 to Ohio River	Kenton/ Campbell	WAH, PCR, SCR, DWS	
Miner Creek	River Mile 2.0 to Craney Creek	Morgan/Rowan	CAH, PCR, SCR	
North Fork of Licking River	Source to Licking River	Pendleton/ Bracken	WAH, PCR, SCR, DWS	
Slabcamp Creek	Basin including Stonecoal Branch	Rowan	CAH, PCR, SCR	
Slate Creek	Source to Licking River	Bath	WAH, PCR, SCR, DWS	
South Fork of Licking River	River Mile 65.1 to Licking River	Pendleton	WAH, PCR, SCR, DWS	
LAKES AND RESERVOIRS				
Cave Run	Entire Reservoir	Rowan/Bath	WAH, PCR, SCR	
KENTUCKY RIVER BASIN				
Bailey Run	Basin	Anderson	WAH, PCR, SCR	
Buck Lick Branch	Basin	Lee	WAH, PCR, SCR	
Cedar Brook	Basin	Anderson	WAH, PCR, SCR	
Chimney Top Creek	Basin	Wolfe	CAH, PCR, SCR	
Clarks Run	Source to Herrington Lake	Boyle	WAH, PCR, SCR	

~~Dix River~~	~~Source to River Mile 33.1 (Headwaters of Herrington Lake)~~	~~Boyle/ Garrard~~	~~WAH, PCR, SCR~~	
~~Dix River~~	~~Herrington Lake Dam to Kentucky River~~	~~Garrard/ Mercer~~	~~CAH, PCR, SCR~~	
~~Dog Fork~~	~~Basin~~	~~Wolfe~~	~~CAH, PCR, SCR~~	
~~East Fork of Indian Creek~~	~~Source to Indian Creek~~	~~Menifee~~	~~CAH, PCR, SCR~~	
~~Gladie Creek~~	~~Basin~~	~~Menifee~~	~~CAH, PCR, SCR~~	
~~Hanging Fork Creek~~	~~Source to Dix River~~	~~Boyle/Lincoln~~	~~WAH, PCR, SCR~~	
~~Indian Creek~~	~~River Mile 5.2 to River Mile 1.2~~	~~Menifee~~	~~CAH, PCR, SCR~~	
~~Kentucky River~~	~~River Mile 254.8 to Ohio River~~	~~Carroll~~	~~WAH, PCR, SCR, DWS~~	
~~Middle Fork of Kentucky River~~	~~Source to River Mile 76.6 (Headwaters of Buckhorn Lake)~~	~~Leslie~~	~~WAH, PCR, SCR~~	
~~Middle Fork of Kentucky River~~	~~River Mile 43.2 (Buckhorn Lake Dam) to North Fork of Kentucky River~~	~~Lee~~	~~WAH, PCR, SCR~~	
~~Middle Fork of Red River~~	~~Source to River Mile 10.6~~	~~Powell~~	~~CAH, PCR, SCR~~	
~~North Fork of Kentucky River~~	~~Source to Kentucky River~~	~~Lee~~	~~WAH, PCR, SCR, DWS~~	
~~Parched Corn Creek~~	~~Source to Red River~~	~~Wolfe~~	~~CAH, PCR, SCR~~	
~~Red River~~	~~Source to River Mile 68.6~~	~~Menifee/ Wolfe~~	~~WAH, PCR, SCR~~	
~~Red River~~	~~River Mile 68.6 to River Mile 49.2~~	~~Menifee/ Wolfe~~	~~WAH, PCR, SCR, OSRW~~	
~~Red River~~	~~River Mile 49.2 to Kentucky River~~	~~Clark/Estill~~	~~WAH, PCR, SCR, DWS~~	
~~Rose Creek~~	~~Source to Kentucky River~~	~~Lee~~	~~WAH, PCR, SCR~~	
~~Silver Creek~~	~~Source to Kentucky River~~	~~Madison~~	~~WAH, PCR, SCR~~	
~~South Fork of Elkhorn Creek~~	~~Source to North Fork of Elkhorn Creek~~	~~Franklin~~	~~WAH, PCR, SCR~~	
~~South Fork of Kentucky River~~	~~Source to Kentucky River~~	~~Lee~~	~~WAH, PCR, SCR, DWS~~	
~~Swift Camp Creek~~	~~Source to Red River~~	~~Wolfe~~	~~CAH, PCR, SCR~~	
~~Town Branch~~	~~Source to South Fork of Elkhorn Creek~~	~~Fayette~~	~~WAH, PCR, SCR~~	
~~War Fork of Station Camp Creek~~	~~Source to River Mile 8.5~~	~~Jackson~~	~~WAH, PCR, SCR~~	
~~War Fork of Station Camp Creek~~	~~River Mile 8.5 to River Mile 2.0~~	~~Jackson~~	~~CAH, PCR, SCR~~	
~~War Fork of Station Camp Creek~~	~~River Mile 2.0 to Station Camp Creek~~	~~Jackson~~	~~WAH, PCR, SCR~~	
~~LAKES AND RESERVOIRS~~				
~~Bert Combs~~	~~Entire Reservoir~~	~~Clay~~	~~WAH, CAH, PCR, SCR, DWS~~	
~~Buckhorn~~	~~Entire Reservoir~~	~~Perry~~	~~WAH, PCR, SCR, DWS~~	
~~Carr Fork~~	~~Entire Reservoir~~	~~Knott/Perry~~	~~WAH, PCR, SCR~~	
~~Fishpond~~	~~Entire Reservoir~~	~~Letcher~~	~~WAH, CAH, PCR, SCR~~	
~~Herrington~~	~~Entire Reservoir~~	~~Garrard/Mercer~~	~~WAH, PCR, SCR, DWS~~	
~~Mill Creek~~	~~Entire Reservoir~~	~~Wolfe~~	~~WAH, CAH, PCR, SCR, DWS~~	
~~SALT RIVER BASIN~~				
~~Beech Fork of Salt River~~	~~Source to Salt River~~	~~Hardin/Bullitt~~	~~WAH, PCR, SCR, DWS~~	
~~Chenoweth Run~~	~~Source to Floyds Fork~~	~~Jefferson~~	~~WAH, PCR, SCR~~	
~~Currys Fork~~	~~Confluence of South and North Forks to Floyds Fork~~	~~Oldham~~	~~WAH, PCR, SCR~~	
~~Floyds Fork~~	~~Source to Salt River~~	~~Bullitt~~	~~WAH, PCR, SCR~~	
~~Mill Creek~~	~~Source to Salt River~~	~~Bullitt~~	~~WAH, PCR, SCR~~	
~~North Fork of Currys Fork~~	~~Source to South Fork of Currys Fork~~	~~Oldham~~	~~WAH, PCR, SCR~~	
~~Rolling Fork of Salt River~~	~~Source to River Mile 62.5~~	~~Larue and Nelson~~	~~WAH, PCR, SCR, DWS~~	
~~Rolling Fork of Salt River~~	~~River Mile 62.5 to River Mile 53.6~~	~~Larue and Nelson~~	~~WAH, PCR, SCR, OSRW~~	
~~Rolling Fork of Salt River~~	~~River Mile 53.6 to Salt River~~	~~Larue and Nelson~~	~~WAH, PCR, SCR~~	
~~Rolling Fork of Salt River~~	~~Source to Salt River~~	~~Bullitt~~	~~WAH, PCR, SCR, DWS~~	
~~Salt River~~	~~Source to River Mile 74.8 (Headwaters of Taylorsville Lake)~~	~~Anderson~~	~~WAH, PCR, SCR, DWS~~	
~~Salt River~~	~~River Mile 60.1 (Taylorsville Lake Dam) to Ohio River~~	~~Hardin/ Jefferson~~	~~WAH, PCR, SCR, DWS~~	
~~Unnamed tributary to Mill Creek~~	~~Source to Mill Creek at River Mile 11.8~~	~~Bullitt~~	~~WAH, PCR, SCR~~	
~~LAKES AND RESERVOIRS~~				
~~Taylorsville~~	~~Entire Reservoir~~	~~Spencer~~	~~WAH, PCR, SCR~~	
~~GREEN RIVER BASIN~~				
~~Barren River~~	~~Source to River Mile 118.5 (Headwaters of Barren River Lake)~~	~~Allen~~	~~WAH, PCR, SCR~~	
~~Barren River~~	~~River Mile 79.1 (Barren River Lake Dam) to River Mile 15.0~~	~~Warren~~	~~WAH, PCR, SCR, DWS~~	
~~Barren River~~	~~River Mile 15.0 to Green River~~	~~Butler/Warren~~	~~WAH, PCR, SCR, OSRW~~	
~~Beaverdam Creek~~	~~Source to Green River~~	~~Edmonson~~	~~CAH, PCR, SCR~~	

~~Big Pitman Creek~~	~~Source to Green River~~	~~Green~~	~~WAH, PCR, SCR~~	
~~Black Lick Creek~~	~~Source to Clear Fork~~	~~Logan~~	~~WAH, PCR, SCR, DWS~~	
~~Buck Horn Creek~~	~~Source to Little Pitman Creek~~	~~Taylor~~	~~WAH, PCR, SCR~~	
~~Buffalo Creek~~	~~Source to Green River (in Mammoth Cave National Park)~~	~~Edmonson~~	~~WAH, PCR, SCR~~	
~~Cypress Creek~~	~~Source to Pond River~~	~~McLean~~	~~WAH, PCR, SCR~~	
~~Drakes Creek~~	~~Confluence of West Fork and Middle Fork to Barren River~~	~~Warren~~	~~WAH, PCR, SCR~~	
~~Gasper River~~	~~Source to Barren River~~	~~Warren~~	~~WAH, PCR, SCR~~	
~~Green River~~	~~Source to River Mile 340.1 (Headwaters of Green River Lake)~~	~~Adair~~	~~WAH, PCR, SCR, DWS~~	
~~Green River~~	~~River Mile 305.6 (Green River Lake Dam) to River Mile 207.8~~	~~Hart~~	~~WAH, PCR, SCR, OSRW, DWS~~	
~~Green River~~	~~River Mile 207.8 to River Mile 181.7~~	~~Edmonson~~	~~WAH, PCR, SCR, OSRW~~	
~~Green River~~	~~River Mile 181.7 to River Mile 168.0~~	~~Butler/ Warren~~	~~WAH, PCR, SCR, DWS~~	
~~Green River~~	~~River Mile 168.0 to River Mile 148.0~~	~~Butler~~	~~WAH, PCR, SCR, OSRW~~	
~~Green River~~	~~River Mile 148.0 to Ohio River~~	~~Henderson~~	~~WAH, PCR, SCR, DWS~~	
~~Lick Creek~~	~~Source to West Fork of Drakes Creek~~	~~Simpson~~	~~CAH, PCR, SCR~~	
~~Little Pitman Creek~~	~~Source to Big Pitman Creek~~	~~Green~~	~~WAH, PCR, SCR~~	
~~Lynn Camp Creek~~	~~Source to Green River~~	~~Hart~~	~~CAH, PCR, SCR~~	
~~Middle Pitman Creek~~	~~Source to Big Pitman Creek~~	~~Green~~	~~WAH, PCR, SCR~~	
~~Underground River System~~	~~Mammoth Cave National Park~~	~~Edmonson/ Hart/Barren~~	~~CAH, PCR, SCR, OSRW~~	
~~Turnhole Spring~~	~~Basin Outside Mammoth Cave National Park Boundary~~	~~Edmonson/ Barren~~	~~CAH, PCR, SCR, OSRW~~	
~~Echo River~~	~~Basin Outside Mammoth Cave National Park Boundary~~	~~Edmonson~~	~~CAH, PCR, SCR, OSRW~~	
~~Pike Spring~~	~~Basin Outside Mammoth Cave National Park Boundary~~	~~Edmonson~~	~~CAH, PCR, SCR, OSRW~~	
~~Mile 205.7 Spring~~	~~Basin Outside Mammoth Cave National Park Boundary~~	~~Hart~~	~~CAH, PCR, SCR, OSRW~~	
~~McCoy Spring~~	~~Basin Outside Mammoth Cave National Park Boundary~~	~~Hart~~	~~CAH, PCR, SCR, OSRW~~	
~~Suds Spring~~	~~Basin Outside Mammoth Cave National Park Boundary~~	~~Hart/Barren~~	~~CAH, PCR, SCR, OSRW~~	
~~Double Sink Spring~~	~~Basin Outside Mammoth Cave National Park Boundary~~	~~Edmonson/ Barren~~	~~CAH, PCR, SCR, OSRW~~	
~~Ganter Spring~~	~~Basin Outside Mammoth Cave National Park Boundary~~	~~Edmonson~~	~~CAH, PCR, SCR, OSRW~~	
~~Running Spring~~	~~Basin Outside Mammoth Cave National Park Boundary~~	~~Edmonson~~	~~CAH, PCR, SCR, OSRW~~	
~~Mud River~~	~~Source to Green River~~	~~Butler/ Muhlenberg~~	~~WAH, PCR, SCR~~	
~~Nolin River~~	~~Source to River Mile 64.3 (Headwaters of Nolin Lake)~~	~~Hart/Grayson~~	~~WAH, PCR, SCR~~	
~~Nolin River~~	~~River Mile 7.6 (Nolin Lake Dam) to Green River~~	~~Edmonson~~	~~CAH, PCR, SCR~~	
~~Rough River~~	~~Source to River Mile 133.8 (Headwaters of Rough River Lake)~~	~~Hardin~~	~~WAH, PCR, SCR, DWS~~	
~~Rough River~~	~~River Mile 89.3 (Rough River Lake Dam) to River Mile 88.5~~	~~Ohio/ Grayson~~	~~CAH, PCR, SCR, DWS~~	
~~Rough River~~	~~River Mile 72.4 to Green River~~	~~McLean/Ohio~~	~~WAH, PCR, SCR, DWS~~	
~~Rough River~~	~~River Mile 88.5 to River Mile 74.2~~	~~Ohio/ Grayson~~	~~WAH, PCR, SCR~~	
~~Rough River~~	~~River Mile 74.2 to River Mile 73.6~~	~~McLean/Ohio~~	~~CAH, PCR, SCR~~	
~~Rough River~~	~~River Mile 73.6 to Green River~~	~~Ohio/ Grayson~~	~~WAH, PCR, SCR, DWS~~	
~~Roundstone Creek~~	~~Source to Hwy 1140 (River Mile 3.5)~~	~~Hart~~	~~CAH, PCR, SCR~~	
~~Sharp's Branch~~	~~Source to West Fork of Drakes Creek~~	~~Simpson~~	~~WAH, PCR, SCR~~	
~~Trammel Fork~~	~~River Mile 30.15 (Kentucky/Tennessee State Line) to Hwy 31E (River Mile 23.6)~~	~~Allen~~	~~CAH, PCR, SCR~~	
~~Trammel Fork~~	~~River Mile 23.6 to Drakes Creek~~	~~Warren~~	~~WAH, PCR, SCR~~	
~~West Fork of Drakes Creek~~	~~Source to Confluence with Middle Fork of Drakes Creek~~	~~Warren~~	~~WAH, PCR, SCR, DWS~~	
~~Wigginton Creek~~	~~Source to Gasper River~~	~~Logan~~	~~WAH, PCR, SCR~~	
~~LAKES AND RESERVOIRS~~				

Barren River	Entire Reservoir	Barren/Allen	WAH, PCR, SCR, DWS	
Green River	Entire Reservoir	Taylor	WAH, PCR, SCR, DWS	
Nolin	Entire Reservoir	Edmonson	WAH, PCR, SCR, DWS	
Rough River	Entire Reservoir	Breckinridge/ Grayson	WAH, PCR, SCR, DWS	
LOWER CUMBERLAND RIVER BASIN				
Casey Creek	Source to Little River	Trigg	CAH, PCR, SCR	
Cumberland River	River Mile 30.8 (Lake Barkley Dam) to Ohio River	Livingston	WAH, PCR, SCR, DWS	
Skinframe Creek	Source to Livingston Creek	Lyon	CAH, PCR, SCR	
Sulphur Spring Creek	Source to Red River	Simpson	CAH, PCR, SCR	
West Fork of Red River	River Mile 32.2 to Kentucky/Tennessee State Line (River Mile 14.5)	Christian	CAH, PCR, SCR	
Whippoorwill Creek	Source to Red River	Logan	WAH, PCR, SCR, OSRW	
LAKES AND RESERVOIRS				
Barkley	Entire Reservoir from Kentucky/Tennessee State Line (River Mile 74.7)	Lyon/ Livingston	WAH, PCR, SCR, DWS	
TENNESSEE RIVER BASIN				
Tennessee River	River Mile 22.4 (Kentucky Lake Dam) to River Mile 12.0	Livingston/ McCracken	WAH, PCR, SCR, OSRW	
Tennessee River	River Mile 12.0 to Ohio River	Livingston/ McCracken	WAH, PCR, SCR, DWS	
LAKES AND RESERVOIRS				
Kentucky	Entire Reservoir from Kentucky/Tennessee State Line (River Mile 62.4)	Livingston/ Marshall	WAH, PCR, SCR, DWS	
TRADEWATER RIVER BASIN				
Crab Orchard Creek/Vaughn Ditch	Source to Tradewater River	Webster	WAH, PCR, SCR	
Montgomery Creek	Source to Tradewater River	Caldwell	WAH, PCR, SCR	
Tradewater River	Source to Ohio River	Crittenden/ Union	WAH, PCR, SCR	
OHIO RIVER BASIN (Main Stem and Minor Tributaries)				
Doe Run Creek	Source to Hwy 1628 (River Mile 5.15)	Meade	CAH, PCR, SCR	
Ohio River	Big Sandy River (River Mile 317.1) to River Mile 848.0	Union	WAH, PCR, SCR, DWS	
Ohio River	River Mile 848.0 to River Mile 850.0	Union	WAH, PCR, SCR, OSRW	
Ohio River	River Mile 850.0 to River Mile 859.0	Union	WAH, PCR, SCR	
Ohio River	River Mile 859.0 to River Mile 861.0	Union	WAH, PCR, SCR, OSRW	
Ohio River	River Mile 861.0 to River Mile 865.0	Union	WAH, PCR, SCR	
Ohio River	River Mile 865.0 to River Mile 867.0	Union	WAH, PCR, SCR, OSRW	
Ohio River	River Mile 867.0 to River Mile 940.7	McCracken	WAH, PCR, SCR	
Ohio River	River Mile 940.7 to River Mile 943.3	McCracken	WAH, PCR, SCR, DWS, OSRW	
Ohio River	River Mile 943.3 to River Mile 948.2	McCracken	WAH, PCR, SCR, DWS	
Ohio River	River Mile 948.2 to River Mile 949.5	Ballard	WAH, PCR, SCR, DWS, OSRW	
Ohio River	River Mile 949.5 to River Mile 966.3	Ballard	WAH, PCR, SCR, DWS	
Ohio River	River Mile 966.3 to River Mile 969.5	Ballard	WAH, PCR, SCR, DWS, OSRW	
Ohio River	River Mile 969.5 to Mississippi River	Ballard	WAH, PCR, SCR, DWS	
Ohio River	River Mile 922.0 to River Mile 923.5 (Channel East of Towhead Island)	Livingston	WAH, PCR, SCR, OSRW	
Otter Creek	River Mile 9.7 to Ohio River	Meade	CAH, PCR, SCR	
Paddy's Run	Source to Ohio River	Jefferson	PCR, SCR	401 KAR 5:031, Section 2(1)(d) and (2) do not apply
Sinking Creek	Source to Hwy 259 (River Mile 4.0)	Breckinridge	CAH, PCR, SCR	
White Oak Creek	River Mile 1.08 to Ohio River	Greenup	SCR	401 KAR 5:031, Section 2(1)(d) and (2) do not apply

~~LAKES AND RESERVOIRS~~				
~~Metropolis~~	~~Entire Lake~~	~~McCracken~~	~~WAH, PCR, SCR, OSRW~~	
~~Swan~~	~~Entire Lake~~	~~Ballard~~	~~WAH, PCR, SCR, OSRW~~	
~~MISSISSIPPI RIVER BASIN (Main Stem and Minor Tributaries)~~				
~~Bayou de Chien~~	~~Source to River Mile 13.0~~	~~Hickman~~	~~WAH, PCR, SCR, OSRW~~	
~~Cane Creek of Bayou de Chien~~	~~Basin~~	~~Graves~~	~~WAH, PCR, SCR, OSRW~~	
~~Jackson Creek~~	~~Basin~~	~~Graves~~	~~WAH, PCR, SCR, OSRW~~	
~~Sand Creek~~	~~Basin~~	~~Graves~~	~~WAH, PCR, SCR, OSRW~~	
~~South Fork of Bayou de Chien~~	~~Basin~~	~~Graves~~	~~WAH, PCR, SCR, OSRW~~	
~~Mississippi River~~	~~Confluence with Ohio River to River Mile 947.0~~	~~Carlisle~~	~~WAH, PCR, SCR~~	
~~Mississippi River~~	~~River Mile 947.0 to River Mile 945.0~~	~~Carlisle~~	~~WAH, PCR, SCR, OSRW~~	
~~Mississippi River~~	~~River Mile 945.0 to River Mile 935.0~~	~~Carlisle~~	~~WAH, PCR, SCR~~	
~~Mississippi River~~	~~River Mile 935.0 to River Mile 930.0~~	~~Carlisle~~	~~WAH, PCR, SCR, OSRW~~	
~~Mississippi River~~	~~River Mile 930.0 to Kentucky/Tennessee State Line~~	~~Fulton~~	~~WAH, PCR, SCR~~	
~~Murphy's Pond~~	~~Entire Pond and Preserve Area~~	~~Hickman~~	~~WAH, PCR, SCR, OSRW~~	
~~UPPER CUMBERLAND RIVER BASIN~~				
~~Acorn Fork~~	~~Basin above River Mile 1.0~~	~~Knox~~	~~WAH, PCR, SCR, OSRW~~	
~~Adams Branch~~	~~Basin~~	~~Whitley~~	~~WAH, PCR, SCR, OSRW~~	
~~Archers Creek~~	~~Basin~~	~~Whitley~~	~~WAH, PCR, SCR, OSRW~~	
~~Bad Branch~~	~~Basin~~	~~Letcher~~	~~CAH, PCR, SCR, OSRW~~	
~~Bark Camp Creek~~	~~Basin~~	~~Whitley~~	~~CAH, PCR, SCR~~	
~~Beaver Creek~~	~~Basin~~	~~McCreary~~	~~CAH, PCR, SCR, OSRW~~	
~~Beaver Creek~~	~~Source to Lake Cumberland~~	~~Wayne~~	~~WAH, PCR, SCR~~	
~~Beck's Creek~~	~~Basin~~	~~Whitley~~	~~WAH, PCR, SCR~~	
~~Bennetts Fork of Yellow Creek~~	~~Basin (Kentucky/Tennessee State Line) above River Mile 5.0~~	~~Bell~~	~~WAH, PCR, SCR, OSRW~~	
~~Bens Fork of Little Clear Creek~~	~~Basin~~	~~Bell~~	~~WAH, PCR, SCR, OSRW~~	
~~Big Branch~~	~~Basin Above River Mile 0.8~~	~~McCreary~~	~~WAH, PCR, SCR, OSRW~~	
~~Big Lick Branch~~	~~Basin~~	~~Pulaski~~	~~WAH, PCR, SCR, OSRW~~	
~~Big South Fork of Cumberland River~~	~~River Mile 55.2 to River Mile 45.0~~	~~McCreary~~	~~WAH, PCR, SCR, OSRW~~	
~~Blacksnake Branch~~	~~Basin~~	~~Bell~~	~~WAH, PCR, SCR, OSRW~~	
~~Breeden's Creek~~	~~Basin~~	~~Harlan~~	~~WAH, PCR, SCR, OSRW~~	
~~Brees Creek~~	~~Basin~~	~~Knox~~	~~WAH, PCR, SCR, OSRW~~	
~~Brownies Creek~~	~~Basin to River Mile 10.0~~	~~Harlan~~	~~WAH, PCR, SCR, OSRW~~	
~~Buck Creek~~	~~River Mile 53.3 to River Mile 10.5~~	~~Pulaski~~	~~WAH, PCR, SCR, OSRW~~	
~~Buck Creek~~	~~Basin~~	~~Whitley~~	~~WAH, PCR, SCR, OSRW~~	
~~Bucks Branch~~	~~Basin~~	~~Whitley~~	~~WAH, PCR, SCR, OSRW~~	
~~Buffalo Creek~~	~~Basin to Kentucky/Tennessee State Line (River Mile 3.2)~~	~~Whitley~~	~~WAH, PCR, SCR, OSRW~~	
~~Bunches Creek~~	~~Basin~~	~~Whitley~~	~~CAH, PCR, SCR, OSRW~~	
~~Campbell Branch~~	~~Basin~~	~~Whitley~~	~~WAH, PCR, SCR, OSRW~~	

~~Cane Creek~~	~~Basin~~	~~Laurel~~	~~WAH, PCR, SCR~~	
~~Caney Creek~~	~~Basin~~	~~Bell~~	~~WAH, PCR, SCR, OSRW~~	
~~Cannon Creek~~	~~Basin above Cannon Creek Lake~~	~~Bell~~	~~WAH, PCR, SCR, OSRW~~	
~~Clover Bottom Creek~~	~~River Mile 1.4 to Horselick Creek~~	~~Jackson~~	~~CAH, PCR, SCR~~	
~~Cogur Fork~~	~~Basin~~	~~McCreary~~	~~CAH, PCR, SCR~~	
~~Coles Branch~~	~~Basin~~	~~Knox~~	~~WAH, PCR, SCR, OSRW~~	
~~Colliers Creek~~	~~Basin~~	~~Bell~~	~~WAH, PCR, SCR, OSRW~~	
~~Criscillis Branch~~	~~Basin~~	~~Whitley~~	~~WAH, PCR, SCR, OSRW~~	
~~Cumberland River~~	~~River Mile 694.2 to River Mile 574.6~~	~~Whitley~~	~~WAH, PCR, SCR, DWS~~	
~~Cumberland River~~	~~River Mile 574.6 to River Mile 558.5 (Headwaters of Lake Cumberland)~~	~~McCreary/ Whitley~~	~~WAH, PCR, SCR, OSRW~~	
~~Cumberland River~~	~~River Mile 460.9 (Lake Cumberland Dam) to Kentucky/Tennessee State Line (River Mile 401.05)~~	~~Monroe~~	~~CAH, PCR, SCR, DWS~~	
~~Davis Branch~~	~~Basin~~	~~Bell~~	~~WAH, PCR, SCR, OSRW~~	
~~Difficulty Creek~~	~~Basin~~	~~McCreary~~	~~WAH, PCR, SCR~~	
~~Dog Slaughter Creek~~	~~Basin~~	~~Whitley~~	~~CAH, PCR, SCR, OSRW~~	
~~Eagle Creek~~	~~Basin~~	~~McCreary~~	~~WAH, PCR, SCR, OSRW~~	
~~Four Mile Creek~~	~~Basin above River Mile 2.5~~	~~Bell~~	~~WAH, PCR, SCR, OSRW~~	
~~Four Mile Run~~	~~Basin above River Mile 1.0~~	~~Bell~~	~~WAH, PCR, SCR, OSRW~~	
~~Fugitt Creek~~	~~Basin~~	~~Harlan~~	~~CAH, PCR, SCR~~	
~~Hale Fork~~	~~Basin~~	~~Knox~~	~~WAH, PCR, SCR, OSRW~~	
~~Hawk Creek~~	~~Basin~~	~~Laurel~~	~~CAH, PCR, SCR~~	
~~Hinkle Branch~~	~~Basin~~	~~Knox~~	~~WAH, PCR, SCR, OSRW~~	
~~Honeycutt Branch~~	~~Basin~~	~~Knox~~	~~WAH, PCR, SCR, OSRW~~	
~~Horse Lick Creek~~	~~River Mile 12.3 to Middle Fork of Rockcastle River~~	~~Jackson/ Rockcastle~~	~~WAH, PCR, SCR, OSRW~~	
~~Hunting Shirt Branch~~	~~Basin~~	~~Knox~~	~~WAH, PCR, SCR, OSRW~~	
~~Indian Creek~~	~~Source to Barren Fork~~	~~McCreary~~	~~CAH, PCR, SCR~~	
~~Jennys Branch~~	~~Basin~~	~~McCreary~~	~~WAH, PCR, SCR, OSRW~~	
~~Kelly Branch~~	~~Basin~~	~~Harlan~~	~~WAH, PCR, SCR~~	
~~Kennedy Creek~~	~~River Mile 1.0 to Little South Fork of Cumberland River~~	~~Wayne~~	~~WAH, PCR, SCR, OSRW~~	
~~Kilburn Fork of Indian Creek~~	~~Basin~~	~~McCreary~~	~~WAH, PCR, SCR, OSRW~~	
~~Laurel Creek of Marsh Creek~~	~~River Mile 9.0 to River Mile 3.4~~	~~McCreary~~	~~CAH, PCR, SCR, OSRW~~	
~~Laurel Fork~~	~~Source to Middle Fork of Rockcastle River~~	~~Jackson~~	~~WAH, PCR, SCR, OSRW~~	
~~Laurel Fork of Clear Fork~~	~~Basin above River Mile 16.0~~	~~Bell~~	~~WAH, PCR, SCR, OSRW~~	
~~Laurel Fork of Clear Fork~~	~~River Mile 16.0 to River Mile 4.25 (Kentucky/Tennessee State Line)~~	~~Whitley~~	~~WAH, PCR, SCR, OSRW~~	
~~Laurel Fork of Indian Creek~~	~~Basin~~	~~McCreary~~	~~WAH, PCR, SCR, OSRW~~	
~~Laurel River~~	~~Laurel River Lake Dam (River Mile 2.1) to River Mile 0.9~~	~~Laurel~~	~~CAH, PCR, SCR~~	
~~Lick Fork~~	~~Basin~~	~~Bell~~	~~WAH, PCR, SCR, OSRW~~	
~~Little Clear Creek~~	~~Basin from Confluence with Fuson Branch~~	~~Bell~~	~~WAH, PCR, SCR~~	
~~Little Poplar Creek~~	~~Basin above and including East Ridge Branch~~	~~Knox~~	~~WAH, PCR, SCR, OSRW~~	
~~Little South Fork of Cumberland River~~	~~River Mile 35.6 to River Mile 4.1~~	~~Wayne~~	~~WAH, PCR, SCR, OSRW~~	

Little Yellow Creek	River Mile 3.2 (Fern Lake Dam) to Yellow Creek	Bell	WAH, PCR, SCR	
Long Branch	Basin	Bell	WAH, PCR, SCR, OSRW	
Looney Creek	Basin above River Mile 5.3	Harlan	CAH, PCR, SCR	
Marsh Creek	Basin above River Mile 24.0	McCreary	WAH, PCR, SCR, OSRW	
Marsh Creek	River Mile 24.0 to Confluence with Cumberland River	McCreary	WAH, PCR, SCR, OSRW	
Martins Fork	Basin above River Mile 31.3	Harlan	CAH, PCR, SCR	
Martin's Fork	River Mile 31.3 to River Mile 27.4	Harlan	CAH, PCR, SCR, OSRW	
Meadow Fork	Basin	Letcher	WAH, PCR, SCR, OSRW	
Middle Fork of Rockcastle River	River Mile 61.1 to River Mile 53.3	Jackson	WAH, PCR, SCR, OSRW	
Mill Branch	Basin	Knox	WAH, PCR, SCR, OSRW	
Mill Creek of Straight Creek	Basin	Bell	WAH, PCR, SCR, OSRW	
Mill Creek	Basin	McCreary	WAH, PCR, SCR, OSRW	
Moores Creek	Basin	Knox	WAH, PCR, SCR, OSRW	
Mud Creek	Basin above River Mile 6.5	Whitley	WAH, PCR, SCR, OSRW	
Mud Lick	Basin	Knox	WAH, PCR, SCR, OSRW	
Ned Branch	Basin	Laurel	WAH, PCR, SCR, OSRW	
Patterson Creek	Basin above River Mile 7.4	Whitley	WAH, PCR, SCR, OSRW	
Poor Fork of Cumberland River	Basin above River Mile 742.5	Letcher	CAH, PCR, SCR, OSRW	
Poor Fork of Cumberland River	River Mile 742.5 to Jefferson National Forest Boundary (River Mile 720.55)	Harlan	WAH, PCR, SCR	
Poor Fork of Cumberland River	River Mile 720.55 to Clover Fork of Cumberland River	Harlan	WAH, PCR, SCR, DWS	
Razor Fork	Basin	Harlan	WAH, PCR, SCR	
Richland Creek	Basin above River Mile 15.7	Knox	WAH, PCR, SCR, OSRW	
Roaring Fork	Basin	Knox	WAH, PCR, SCR, OSRW	
Rock Creek	Kentucky/Tennessee State Line (River Mile 21.9) to White Oak Creek	McCreary	CAH, PCR, SCR, OSRW	
Rock Creek	Basin from confluence with Jellico Creek	McCreary	WAH, PCR, SCR, OSRW	
Rockcastle River	River Mile 53.3 to River Mile 8.5	Laurel/ Pulaski	WAH, PCR, SCR, OSRW	
Ross Branch	Basin	Whitley	WAH, PCR, SCR, OSRW	
Roundstone Creek	Source to River Mile 13.5	Rockcastle	WAH, PCR, SCR	
Roundstone Creek	River Mile 13.5 to River Mile 4.7	Rockcastle	WAH, PCR, SCR, OSRW	
Roundstone Creek	River Mile 4.7 to Rockcastle River	Rockcastle	WAH, PCR, SCR, DWS	
Ryans Creek	Basin	Whitley	WAH, PCR, SCR, OSRW	
Sanders Creek	Basin	Whitley	WAH, PCR, SCR, OSRW	
Shillalah Creek	Source to Cumberland Gap National Historical Park Boundary	Bell	CAH, PCR, SCR	
Shut-in Branch	Basin	McCreary	WAH, PCR, SCR, OSRW	
Sinking Creek	Source to Rockcastle River	Laurel	WAH, PCR, SCR, OSRW	
Sims Fork	Basin	Bell	WAH, PCR, SCR, OSRW	
Smith Creek	Basin	Letcher	WAH, PCR, SCR, OSRW	
South Fork of Rockcastle River	River Mile 2.1 to Rockcastle River	Rockcastle	WAH, PCR, SCR, OSRW	
Stevenson Branch	Basin	Bell	WAH, PCR, SCR,	

			OSRW	
Stony Fork of Bonnetts Fork	Basin above River Mile 2.2	Bell	WAH, PCR, SCR, OSRW	
Straight Creek	Basin	Harlan	WAH, PCR, SCR	
Sugar Run	Source to Cumberland Gap National Historical Park Boundary	Bell	WAH, PCR, SCR	
Trace Branch	Basin	Knox	WAH, PCR, SCR, OSRW	
Trammel Fork	Basin	McCreary	WAH, PCR, SCR, OSRW	
Troublesome Creek	Basin	McCreary	WAH, PCR, SCR	
Turkey Creek	Basin	Knox	WAH, PCR, SCR, OSRW	
Tyes Fork of Bonnetts Fork	Basin	Whitley	WAH, PCR, SCR, OSRW	
Watts Creek	Basin above Camp Blanton Lake	Harlan	WAH, PCR, SCR, OSRW	
White Oak Creek	Basin above River Mile 1.2 (includes Little White Oak Creek)	Laurel	CAH, PCR, SCR	
Wood Creek	River Mile 4.0 (Wood Creek Lake Dam) to Hazel Patch Creek	Laurel	CAH, PCR, SCR	
Yellow Creek	Source to Cumberland River	Bell	WAH, PCR, SCR	
Youngs Creek	Basin	Whitley	WAH, PCR, SCR, OSRW	
LAKES AND RESERVOIRS				
Boulah (-Tyner)	Entire Reservoir	Jackson	WAH, CAH, PCR, SCR, DWS	
Cannon Creek	Entire Reservoir	Bell	WAH, CAH, PCR, SCR, DWS	
Cumberland	Entire Reservoir	Pulaski	WAH, PCR, SCR, DWS	
Dale Hollow	Entire portion of Reservoir within Kentucky	Clinton/ Cumberland	WAH, PCR, SCR, DWS	
Laurel River	Entire Reservoir	Laurel/Whitley	WAH, CAH, PCR, SCR, DWS	
Martins Fork	Entire Reservoir	Harlan	WAH, PCR, SCR	
Wood Creek	Entire Reservoir	Laurel	WAH, CAH, PCR, SCR, DWS]	

Section 6. Incorporation by Reference. (1) "Interim Economic Guidance for Water Quality Standards Workbook", EPA, March 1995 Publication EPA-823-B-95-002. U S Environmental Protection Agency, Office of Water, Washington, D C., is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Division of Water, 14 Reilly Road, Frankfort, Kentucky, Monday through Friday, 8 a m. to 4 30 p.m.

ROBERT D. VANCE, Secretary

APPROVED BY AGENCY: June 5, 2008

FILED WITH LRC: June 12, 2008 at 10 a m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 23, 2008 at 6.30 p.m. (Eastern Time) at the Capitol Annex, Room 149, 702 Capitol Avenue, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by July 16, 2008, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation If you request a transcript, you may be required to pay for it. 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, 2008. 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: Abigail Powell, Regulations Coordinator, Division of Water, 14 Reilly Road, Frankfort, Kentucky 40601, phone (502) 564-3410, fax (502) 564-0111, email Abigail.Powell@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Sandy Gruzesky, Director

(1) Provide a brief summary of.

(a) What this administrative regulation does: This administrative regulation lists the types of designated uses for surface waters of the Commonwealth, provides for redesignation of surface waters, describes the process for redesignation of surface waters, and lists designated uses for specific surface waters of the Commonwealth that have been assigned designated uses.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to inform the reader of the types of designated use categories for surface waters of the Commonwealth, to provide for redesignation of surface waters, and to list designated uses assigned to surface waters. The list of designated uses assigned to specific surface waters of the Commonwealth is a reference tool necessary for the reader to identify which designated uses apply to specific surface waters.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to KRS 224.10-100 which requires the Environmental and Public Protection Cabinet to develop and conduct a comprehensive program for the management of water resources and to provide for the prevention, abatement, and control of pollution. This administrative regulation and 401 KAR 10 001, 10 029, 10.030, and 10:031 establish procedures to protect the surface waters of the Commonwealth and thus manage water resources and prevent water pollution This administrative regulation also makes all surface waters subject to the general criteria specified in 401 KAR 10:031, Section 2.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of statutes by providing for redesignation of surface waters and by listing the designated uses assigned to specific waters of the Common-

wealth. Having the designated uses listed in this way will enable the reader to know which regulatory criteria relate to which water. This information is supportive to achieving compliance with administrative regulations.

(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 alphabetizes table headings in this administrative regulation. This amendment creates a new table, Table B, which indicates specific locations (latitude/longitude and river mile) of 183 surface water intakes and thus the exact locations where domestic water supply criteria in 10:031, Section 6, are applicable. It adds 233 previously unlisted outstanding state resource waters and removes two (2) previously listed outstanding state resource waters because of faulty location records for federally threatened and endangered species. This amendment also removes seventy-four (74) surface waters from the previous table of Surface Water Use Designations that had only the default uses of Warm Water Aquatic Life, Domestic Water Supply, and Primary and Secondary Contact Recreation so that only waters with non-default uses (Outstanding State Resource Waters, Cold Water Aquatic Habitat, Modified Warm Water Aquatic Habitat) are listed. This amendment creates a new designated use, Modified Warm Water Aquatic Habitat, for waters that have undergone extensive man-made modifications to instream or watershed characteristics that result in their inability to support the Warm Water Aquatic Habitat use.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to more fully protect the Commonwealth's best waters by adding 233 waters to the Outstanding State Resource Water use and removes two (2) previously listed outstanding state resource waters because of faulty location records for federally threatened and endangered species. The amended regulation will be more user-friendly by omitting 74 waters from the table that only have default uses, leaving only those waters with non-default uses in Table B. The amended regulation will recognize that there are some waters in the state that cannot be expected to meet Warm Water Aquatic Habitat use because of extensive man-made modifications to the stream or its watershed and thus creates a Modified Warm Water Aquatic Habitat use.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to KRS 224 10-100 that requires the Environmental and Public Protection Cabinet to develop and conduct a comprehensive program for the management of water resources and to provide for the prevention, abatement, and control of pollution This amendment and 401 KAR 10.002, 10 029, 10 030, and 10.031 establish procedures to protect the surface waters of the Commonwealth. This amendment applies the standards to protect designated uses described in 401 KAR 10:031 to surface waters of the Commonwealth.

(d) How the amendment will assist in the effective administration of the statutes: This amendment updates waters listed in specific designated uses based on the most recent scientific information. It also adds 233 of the state's best waters to the outstanding State Resource Water use and creates a new modified warm water aquatic habitat use to recognize those waters which have been significantly altered.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation applies to designated uses to the surface waters of the Commonwealth. All individuals, businesses, organizations, and governments that use the Commonwealth's surface waters for residential, commercial, industrial, or recreational purposes could be impacted by this regulation. This administrative regulation may affect the wastewater treatment operations of local governments if they will have new or expanded discharges into surface waters of the Commonwealth.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The permit limits imposed on dischargers may result in additional or reduced treatment outlays, training costs, and operational changes.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3). The costs to comply with this administrative regulation will vary considerably depending on the site location, the type of activity occurring, and other factors. Therefore, it is not possible to determine quantitative costs to implement this regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Direct and indirect savings may be realized through reduced drinking water treatment costs, maintenance of good agricultural water, maintenance of fisheries, and healthy recreational waters.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:
Initially: This amendment does not change routine procedures involved in managing construction grants, permitting, compliance monitoring, or enforcement. The cabinet does not anticipate additional costs.

(a) On a continuing basis: No major costs are anticipated. The cabinet, in implementing the requirements of this administrative regulation, will internalize associated costs with normal budget appropriations.

(b) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation? The source of revenue will be General Fund, as appropriated by the Kentucky General Assembly, and federal 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: Fees or funding increases are not anticipated to be necessary to the implementation of this amendment.

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

(9) TIERING Is tiering applied? Yes, tiering is applied in this administrative regulation. Any discharger to a water designated as Modified Warm Water Aquatic Habitat use will have less stringent requirements. Any discharger into a water designated as cold water aquatic habitat will require dischargers into such water to meet requirements outlined in 401 KAR 10:031 that are more stringent than requirements for dischargers into surface water designated warm water aquatic habitat. Any discharger into a water designated as an outstanding resource water by this administrative regulation will also have special requirements as outlined in 401 KAR 10.031. Any discharger into a water designated as modified warm water aquatic habitat will have less stringent requirements as outlined in 401 KAR 10:031. Waters listed in Table B as having a surface water intake will have Domestic Water Supply criteria found in 401 KAR 10:031, Section 6.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2 What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation applies to designated uses to the surface waters of the Commonwealth. All governments that use the Commonwealth's surface waters for residential, commercial, industrial, or recreational purposes could be impacted by this regulation. This administrative regulation may affect the wastewater treatment operations of local governments if they will have discharges into surface waters of the Commonwealth that have been re-designated by this amended regulation.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. 40 C.F.R. Part 131, 16 U S C. 1271-1287, 1531-1544, 33 U.S.C. 1311, 1313, 1314, 1316, 1341

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

the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No new revenue will be generated.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No new revenue will be generated.

(c) How much will it cost to administer this program for the first year? There will be no costs

(d) How much will it cost to administer this program for subsequent years? There will be no cost.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation: This amended administrative regulation sets forth instream uses designated by the cabinet that in combination with criteria found in 401 KAR 10.031 provide for protection of water quality of the state's waters. Local governments will be required to discharge effluents which assure attainment of the receiving surface water's designated uses. The costs or savings of this amended administrative regulation would ordinarily be passed through to users; however, a local government that owns a public wastewater treatment system could elect to absorb some or all of the costs or savings. Criteria that apply to these re-designations found in this administrative regulation will be implemented at the time of permit issuance at existing facilities and new dischargers and expanded facilities will comply with the revisions. Local governments withdrawing drinking water from these waters may have lower treatment costs because these waters have lower pollutant loads. Additional costs may be incurred where criteria are more stringent than before or where new criteria are established and less costs may be incurred where criteria are less stringent than previously or where criteria have been eliminated.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. There is no federal statute or regulation mandating that Kentucky implement a water pollution control program. For Kentucky to maintain its delegation over the NPDES permit program, the Clean Water Act requires that Kentucky review its water quality standards every three years and comply with the programmatic requirements of 40 C.F.R. Part 131.

2. State compliance standards. 401 KAR 10:001, 10.026, 10.029, 10:030, and 10:031, the water quality standards regulations.

3. Minimum or uniform standards contained in the federal mandate. The Clean Water Act requires designated uses, criteria, standards and antidegradation policies in water quality standards.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements than those required by the federal mandate? No

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. There are no stricter standards or additional or different responsibilities or requirements.

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

401 KAR 10:029. General provisions.

RELATES TO: KRS 146.200-146.360, 146.410-146.535, 146.550-146.570, 146.600-146.619, 146.990, 224.01-010, 224.01-400, 224.16-050, 224.16-070, 224.70-100-224.70-140, 224.71-100-224.71-145, 224.73-100-224.73-120, 40 C.F.R. Part 136

STATUTORY AUTHORITY: KRS 146.220, 146.241, 146.270, 146.410, 146.450, 146.460, 146.465, 224.10-100, 224.16-050, 224.16-060, 224.70-100, 224.70-110, 40 C.F.R. Part 131, 136, 16 U.S.C. 1531-1544 [et seq.], 33 U.S.C. 1311, 1312, 1313, 1314, 1316, 1341

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100 requires the Environmental and Public Protection Cabinet to develop and conduct a comprehensive program for the management of water resources and to provide for the prevention, abatement, and control of water pollution. This administrative regulation and 401 KAR 10:001, 10:026, 10:030, and 10:031[401 KAR 5:002, 401 KAR 5:026, 401 KAR 5:030, and 401 KAR 5:031] establish procedures to protect the surface waters of the commonwealth, and thus protect water resources. This administrative regulation establishes[:] the commonwealth's surface water antidegradation policy, provides[provide] for withdrawals of waters not meeting water quality standards, and addresses[address] sample collection and analytical methodology and[,] mixing zones[, and variances for coal remining operations].

Section 1. Antidegradation Policy. (1) The purpose of 401 KAR 10:026 through 401 KAR 10:031[401 KAR 5:026 to 401 KAR 5:031] is to safeguard the surface waters of the commonwealth for their designated uses, to prevent the creation of [any] new pollution of these waters, and to abate, if applicable, [any] existing pollution.

(2) Where the quality of surface waters exceeds that necessary to support propagation of fish, shellfish, wildlife and recreation in and on the water, that quality shall be maintained and protected unless the cabinet finds, after full satisfaction of the intergovernmental coordination and public participation provisions of the cabinet's continuing planning process, that allowing lower water quality is necessary to accommodate important economic or social development in the area in which the waters are located.

(a) For point source discharges, water quality shall be maintained and protected in these waters according to the procedures specified in 401 KAR 10:030[401 KAR 5:030], Section 1(2)(b) or (3)(b).

(b) In allowing degradation or lower water quality, the cabinet shall assure water quality adequate to protect existing uses fully.

(c) [Further,] The cabinet shall assure that there shall be achieved the highest statutory and regulatory requirements for waste treatment by all new and existing point sources and that nonpoint sources of pollutants be controlled by application of all cost effective and reasonable best management practices.

(3) Water quality shall be maintained and protected in a water categorized as an outstanding national resource water according to the procedures specified in 401 KAR 10:030[401 KAR 5:030], Section 1(1)(b).

(4) Water quality shall be maintained and protected in those waters designated as outstanding state resource waters according to the procedures specified in 401 KAR 10:031[401 KAR 5:031], Section 8.

(5) If potential water quality impairment associated with a thermal discharge is involved, a successful demonstration conducted under Section 316 of the Clean Water Act, 33 U.S.C. 1326, shall be in compliance with this section.

Section 2. Withdrawal of Contaminated Water. Surface waters occasionally do not meet[may, on occasion, not meet] the criteria established in 401 KAR 10:031[401 KAR 5:031].

(1) Withdrawal and subsequent discharge of these waters without alteration of the physical or chemical characteristics into the same or similar surface water shall not be considered a violation of water quality standards.

(2) The cabinet shall determine KPDES permit limitations in these situations based on the quality of the raw and receiving waters.

(3) The cabinet retains the right to require permit modification under the provisions of 401 KAR 5:035, [401 KAR] 5:065, [401 KAR] 5:070, [401 KAR] 5:075, and [401 KAR] 5:080.

Section 3. Sample Collection and Analytical Methodology.(1) All methods of preservation and analysis used to determine conformity or nonconformity with water quality standards shall be governed by 40 C.F.R. Part 136, as amended, if applicable.

(2) Sample collection and other methods not established in subsection (1) of this section[found in the above reference] may be used as[where] appropriate if they:

(a)[(1)] Meet commonly accepted quality assurance and quality control principles;

(b)[(2)] Are within the accuracy required for determining conformity or nonconformity with water quality standards; and

(c)[(3)] Receive prior written approval by the cabinet.

Section 4. Mixing Zones. The following requirements shall apply to a mixing zone:

(1) Upon request by the applicant for mixing zones for nonconventional pollutants the cabinet shall[may] assign definable geometric limits for mixing zones for a discharge of[or] a pollutant or pollutants within a discharge.

(a) Applicable limits shall include the linear distances from the point of discharge, surface area involvement, volume of receiving water, and shall take into account other nearby mixing zones.

(b) Dilution provided by assigned mixing zones shall not be allowed until applicable limits are assigned by the cabinet in accordance with this section.

(2) Concentrations of toxic substances that exceed the acute criteria for protection of aquatic life in 401 KAR 10:031[401 KAR 5:031] shall not exist within an assigned mixing zone or in the discharge itself unless a zone of initial dilution is assigned.

(a) A zone of initial dilution shall[may] be assigned pursuant to subsection (3) of this section.

(b) Chronic criteria for the protection of aquatic life and criteria for the protection of human health from the consumption of fish tissue shall be met at the edge of the assigned mixing zone.

(3) The following requirements shall apply to a zone of initial dilution:

(a) The cabinet shall require an applicant to provide a technical evaluation for a zone of initial dilution,

(b) Concentrations of toxic substances shall not exceed the acute criteria for the protection of aquatic life at the edge of the assigned zone of initial dilution, except, numeric acute criteria may be exceeded within the zone if the frequency and duration of exposure of aquatic organisms are not sufficient to cause acute toxicity; and

(c) Unless assigned on or before December 8, 1999 [the effective date of this administrative regulation], a zone of initial dilution for a pollutant shall not be allowed in an exceptional water.

(4) Unless assigned on or before the most recent effective date of this administrative regulation, a zone of initial dilution for a pollutant shall be available only to a submerged high-rate multiport outfall structure with a velocity greater than or equal to three (3) meters per second and shall be limited in size to the most restrictive of the following:

(a) The acute criteria shall be met within ten (10) percent of the distance from the edge of the outfall structure to the edge of the regulatory mixing zone in a spatial direction;

(b) The acute criteria shall be met within a distance of fifty (50) times the square root of the cross-sectional area of a discharge port, in a spatial direction; or

(c) The acute criteria shall be met in a horizontal direction within a distance of five (5) times the natural water depth that prevails under mixing zone design conditions, and exists before the installation of a discharge outlet.

(d) Residence times within the zone of initial dilution for drifting organisms shall not exceed fifteen (15) minutes

(5) The location of a mixing zone shall not:

(a) Interfere with fish spawning or nursery areas, fish migration routes, public water supply intakes, or bathing areas;

(b) Preclude the free passage of fish or other aquatic life; or[and]

(c) Jeopardize the continued existence of [any] endangered or threatened aquatic species listed under Section 4 of the Federal Endangered Species Act, 16 U.S.C. 1531 through 1544[et seq.], or result in the destruction or adverse modification of their critical habitat.

(d) Result in a residence time within the mixing zone for drifting organisms of greater than one (1) hour.

(6) Unless assigned on or before December 8, 1999 [the effective date of this administrative regulation], an assigned mixing zone, from the point of discharge in a spatial direction, shall not exceed one-third (1/3) of the width of the receiving stream or one-half (1/2) of the cross-sectional area.

(7) In a lake or a reservoir, unless assigned on or before December 8, 1999[the effective date of this administrative regulation], an assigned mixing zone, from the point of discharge in any spatial direction, shall not exceed one-tenth (1/10) of the width of the lake, or reservoir at the discharge point.

(8) An assigned mixing zone shall be limited to an area or volume which will not adversely affect the designated uses of the receiving water[,] and shall not be so large as to adversely affect an established community of aquatic organisms.

(9) For thermal discharges, a successful demonstration conducted under Section 316(a) of the Clean Water Act, 33 U.S.C. 1326(a), shall constitute compliance with this section.

(10) Unless assigned by the cabinet on or before September 8, 2004 [the effective date of this administrative regulation], there shall not be mixing zones for bioaccumulative chemicals of concern.

(a) A[Any] mixing zone that was assigned by the cabinet for a bioaccumulative chemical of concern shall not expire [no] later than September 8, 2014[ten (10) years from the effective date of this administrative regulation].

(b)1. A bioaccumulative chemical of concern is one that accumulates in one (1) or more aquatic organisms by a human health bioaccumulation factor of greater than 1000.

2. For the purposes of this administrative regulation, bioaccumulative chemicals of concern shall consist of the following:

a.[(a)] alpha-Hexachlorocyclohexane;
b.[(b)] beta-Hexachlorocyclohexane;
c.[(c)] Chlordane;
d.[(d)] DDD;
e.[(e)] DDE;
f.[(f)] DDT;
g.[(g)] delta-Hexachlorocyclohexane;
h.[(h)] Dieldrin;
i.[(i)] Hexachlorobenzene;
j.[(j)] Hexachlorobutadiene;
k.[(k)] Hexachlorocyclohexane;
l.[(l)] Lindane;
m.[(m)] Mercury;
n.[(n)] Mirex;
o.[(o)] Octachlorostyrene;
p.[(p)] PCBs;
q.[(q)] Pentachlorobenzene;
r.[(r)] Photomirex;
s.[(s)] Toxaphene;
t.[(t)] 1,2,3,4-Tetrachlorobenzene;
u.[(u)] 1,2,4,5-Tetrachlorobenzene; and
v.[(v)] 2,3,7,8-TCDD (Dioxin).

[Section 5. Water Quality-based Variance for Coal Remining Operations. (1) Applicability. An applicant for a Kentucky pollutant discharge elimination system (KPDES) permit to discharge pollutants from or affected by a coal remining operation may request a variance from the water quality criteria for pH, iron and manganese set forth in 401 KAR 5:031.

(2) Application requirements.

(a) The applicant shall comply with all KPDES permit application requirements, as set forth in 401 KAR 5:060.

(b) The applicant shall submit documentation from the Department for Surface Mining Reclamation and Enforcement (DSMRE) certifying that the proposed coal remining operation will be located on a remined area.

(c) The applicant shall:

1. Describe the hydrologic balance for the proposed coal remining operation, including:

a. Results of a detailed water quality and quantity monitoring program, including seasonal variations, variations in response to precipitation events, and modeled baseline pollution loads using the monitoring program; and

b. Monitoring for pH, alkalinity, acidity, total iron, total manganese, sulfates, total suspended solids, and any other water quality

~~parameters requested by the cabinet;~~

~~2. Submit the application for a permit from DSMRE;~~

~~3. Submit, if not submitted in the application for a permit from DSMRE:~~

~~a. Plans, cross-sections, and schematic drawings describing the techniques for reducing the discharge of acid-forming materials, iron and manganese;~~

~~b. A description and an explanation of the range of abatement levels that probably can be achieved, costs, and each step proposed to reduce the discharge of acid-forming materials, iron and manganese;~~

~~c. A description of the spoil handling practices necessary to reduce the discharge of acid-forming materials, iron and manganese; and~~

~~d. A detailed topographic map of the proposed coal-remining operation, including the locations of the preexisting and proposed discharges; and~~

~~4. Continue the water quality and quantity monitoring program described in subparagraph 1 of this paragraph, and submit the results to the cabinet on a periodic basis until the cabinet makes a final permit decision. The cabinet shall evaluate the KPDES monitoring program and the DSMRE monitoring program for each applicant to avoid duplication and inconsistencies.~~

~~(d) An applicant with an existing surface coal mining operation seeking a permit revision from DSMRE pursuant to 405 KAR 8:010, Section 20 shall also demonstrate to the satisfaction of the cabinet that:~~

~~1. The applicant discovered discharges within the proposed coal-remining area after the applicant's DSMRE permit was issued; and~~

~~2. The applicant has not caused or contributed to the discharges.~~

~~(3) Treatment requirements. If the cabinet issues a KPDES permit to discharge pollutants from or affected by a coal remining operation containing the variance described in subsection (1) of this section, the water quality based effluent limitations for pH, iron and manganese shall be established on a case-by-case basis. Compliance with these effluent limitations constitutes compliance with these water quality criteria for pH, iron and manganese set forth in 401 KAR 5:031.~~

~~(4) Prohibitions. In addition to the prohibitions contained in 401 KAR 5:055, the following prohibitions apply to this section:~~

~~(a) A KPDES permit containing the water quality based variance of subsection (1) of this section shall not be issued unless the coal remining operation has applied for a permit from the Department for Surface Mining Reclamation and Enforcement, as set forth in 405 KAR Chapters 7 through 24, inclusive. The effective date of the KPDES permit shall not be sooner than the effective date of the permit issued by the Department for Surface Mining Reclamation and Enforcement.~~

~~(b) A KPDES permit containing the water quality based variance of subsection (1) of this section shall not be issued for a surface coal mining operation which is not a coal remining operation located on a remined area.~~

~~(c) A KPDES permit containing the water quality based variance of subsection (1) of this section shall not be issued which would allow the discharges of acid forming materials, iron or manganese to exceed the levels being discharged from the remined area before the coal remining operation begins.~~

~~(d) A KPDES permit containing the water quality based variance of subsection (1) of this section shall not be issued if the applicant fails to demonstrate to the satisfaction of the cabinet that the coal remining operation will result in the potential for improved water quality from the remining operation over that existing prior to the remining operation, and that the information provided in the application is adequate for the cabinet to make an informed final permit decision.~~

~~(e) A KPDES permit containing the water quality based variance of subsection (1) of this section shall not be issued with effluent limitations less stringent than applicable technology based effluent limitations established in 401 KAR 5:065 or 401 KAR 5:080.~~

~~(f) In addition to the prohibitions of paragraphs (a) through (e) of this subsection, a KPDES permit containing the water quality based variance of subsection (1) of this section shall not be issued for an existing surface coal mining operation unless:~~

~~1. The applicant receives a permit revision from DSMRE in accordance with 405 KAR 8:010, Section 20;~~

~~2. The applicant discovered discharges within the proposed coal remining area after the applicant's DSMRE permit was issued; and~~

~~3. The applicant has not caused or contributed to the discharges since August 3, 1977.~~

~~Section 6. Federal Regulation Adopted Without Change. (1) The following federal regulation governs the subject matter of this administrative regulation and is adopted without change. 40 C.F.R. Part 136 Guidelines Establishing Test Procedures for the Analysis of Pollutants, July 1, 2002, U.S. Environmental Protection Agency, U.S. Government Printing Office, Superintendent of Documents, Mail Stop: SSOP, Washington, D.C. 20402-9328.~~

~~(2) This federal regulation may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Water, 14 Reilly Road, Frankfort, Kentucky, Monday through Friday, 8 a.m. to 4:30 p.m.]~~

ROBERT D. VANCE, Secretary

APPROVED BY AGENCY: June 5, 2008

FILED WITH LRC: June 12, 2008 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 23, 2008 at 6:30 p.m. (Eastern Time) at the Capitol Annex, Room 149, 702 Capitol Avenue, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by July 16, 2008, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. If you request a transcript, you may be required to pay for it. 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, 2008. 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: Abigail Powell, Regulations Coordinator, Division of Water, 14 Reilly Road, Frankfort, Kentucky 40601, phone (502) 564-3410, fax (502) 564-0111, email Abigail.Powell@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Sandy Gruzesky, Director

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation provides general provisions under which water quality regulations operate to protect the surface waters of the Commonwealth. This administrative regulation provides for withdrawal of contaminated water, sample collection and methodology, and mixing zones. This administrative regulation is also used in conjunction with 401 KAR 10:030 to implement antidegradation requirements. The purpose of this administrative regulation is to address the issues for water quality protection not covered in 10.026, 10.030, or 10.031. This administrative regulation is used in conjunction with those administrative regulations to form a complete protection program.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish requirements for the protection of the surface waters of the Commonwealth.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to KRS 224.10-100 which requires the Environmental and Public Protection Cabinet to develop and conduct a comprehensive program for the management of water resources and to provide for the prevention, abatement, and control of water pollution. This administrative regulation and 401 KAR 10:026, 10.030, and 10:031 establish procedures to protect the surface waters of the Common-

wealth, and thus manage water resources and prevent water pollution. This administrative regulation establishes the Commonwealth's surface water antidegradation policy (in conjunction with 401 KAR 10:030), provides for withdrawals of waters not meeting water quality standards, addresses sample collection and analytical methodology, mixing zones requires the elimination of mixing zones for existing discharges of bioaccumulative chemicals of concern by September 2014, and does not allow new mixing zones for bioaccumulative chemicals of concern..

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the administration of the statutes by providing specific requirements for the protection of surface waters of the Commonwealth as required by the authorizing statutes.

(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 clarifies that a high rate diffuser shall discharge at a velocity of at least three meters per second and that the cabinet shall assign definable geometric limits for mixing zones.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to establish revised measures to protect human health and aquatic life. For Kentucky to maintain its delegation over the NPDES permit program, the Clean Water Act requires that Kentucky review its water quality standards every three years and comply with the programmatic requirements of 40 C.F.R. Part 131. This administrative regulation is being amended as part of the triennial review.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to KRS 224.10-100 which requires the Environmental and Public Protection Cabinet to develop and conduct a comprehensive program for the management of water resources and to provide for the prevention, abatement, and control of water pollution. This amendment and 401 KAR 10:026, 10:030, and 10.031 establish procedures to protect the surface waters of the Commonwealth, and thus protect water resources. This amendment establishes the Commonwealth's surface water antidegradation policy, provides for withdrawals of waters not meeting water quality standards, and address sample collection and analytical methodology, and mixing zones.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will assist in the effective administration of the statutes by prohibiting discharges that would endanger human health, wildlife, or habitat.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation provides general provisions applicable to municipalities, campgrounds, subdivisions, businesses, marinas, residences, and government agencies with permitted discharges into surface waters of the Commonwealth.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Entities identified in questions (3) will have to: meet water quality standards, addresses sample collection, establish analytical methodology's, eliminate mixing zones for existing discharges of bioaccumulative chemicals of concern by September 2014, not allow new mixing zones for bioaccumulative chemicals of concern

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The costs to comply with this administrative regulation will vary considerably depending on the site location, the type of activity occurring, and other factors. Therefore, it is not possible to determine quantitative costs to implement this regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Stricter requirements could also cause businesses to change locality, resulting in local loss of jobs and revenue; however, maintaining existing water quality may in some cases have a positive influence on revenues derived from water-based tourism and can lower the cost of treating water for drinking water supplies.

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

(a) Initially: This amendment does not change routine procedures involved in managing construction grants, permitting, compliance monitoring, or enforcement. Implementation costs should remain relatively constant.

(b) On a continuing basis. No major costs are anticipated. The cabinet, in implementing the requirements of this amended administrative regulation, will internalize associated costs with normal budget appropriations.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation? The source of revenue will be the General Fund and federal funds, as appropriated by the Kentucky General Assembly.

(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: Fees or funding increases are not anticipated to be necessary to the implementation of this amendment.

(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 fees nor directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Yes, tiering is applied in this administrative regulation. Dischargers with mixing zones and zones of initial dilution must comply with 401 KAR 10:029, Section 4. Dischargers with mixing zones must comply with the Endangered Species Act and must limit discharges of bioaccumulative chemicals of concern in mixing zones. Dischargers with zones of initial dilution must meet specific criteria specified in Section 4 of this administrative regulation.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation may affect the wastewater treatment operations of local government if they will have new or expanded discharges into surface waters of the Commonwealth.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. This amended administrative regulation relates to local governments' wastewater treatment service. KRS 224.10-100, 224.70-100, and 224.70-110 mandate action taken by this administrative regulation.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This regulation will not generate any revenue.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This regulation will not generate any revenue.

(c) How much will it cost to administer this program for the first year? There will be no cost to state or local agencies to implement this regulation.

(d) How much will it cost to administer this program for subsequent years? There will be no cost to state or local agencies to implement this regulation.

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

Revenues (+/-): Cannot be determined

Expenditures (+/-): Cannot be determined

Other Explanation: Wastewater treatment costs may increase for those local governments that will have new or expanded discharges into streams, rivers, and publicly owned lakes and reservoirs. On the other hand, local governments withdrawing drinking water from these waters may have lower treatment costs because these waters should have lower pollutant loads.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. There is no federal statute or regulation mandating that Kentucky implement a water pollution control program. For Kentucky to maintain its delegation over the NPDES permit program, the Clean Water Act requires that Kentucky review its water quality standards every three years and comply with the programmatic requirements of 40 C.F.R. Part 131, including the antidegradation policy.

2. State compliance standards. 401 KAR 10:001, 10:026, 10.029, 10 030, and 10:031, the water quality standards regulations.

3. Minimum or uniform standards contained in the federal mandate. The Clean Water Act requires designated uses, criteria, standards and antidegradation policies in water quality standards.

3. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements than those required by the federal mandate? No

4. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements.
There are no stricter standards or additional or different responsibilities or requirements.

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

401 KAR 10:030. Antidegradation policy implementation methodology.

RELATES TO: KRS 146.200-146.360, 146.410-146.535, 146.550-146.570, 146.600-146.619, 146 990, 224.01-010, 224.01-400, 224.16-050, 224.16-070, 224.70-100-224.70-140, 224.71-100-224.71-145, 224.73-100-224.73-120

STATUTORY AUTHORITY: KRS 146.220, 146 241, 146.270, 146.410, 146 450, 146.460, 146.465, 224.10-100, 224.16-050, 224.16-060, 224.70-100, 224.70-110, 40 C.F.R. Parts 130, 131, 16 U.S.C. 1271-1287 [~~et seq.~~], 1531-1544 [~~et seq.~~], 33 U.S.C. 1311, 1313, 1314, 1315, 1316, 1341, 1342, 1344

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100 requires the Environmental and Public Protection Cabinet to develop and conduct a comprehensive program for the management of water resources and to provide for the prevention, abatement, and control of all water pollution. KRS 224.70-100 declares that the policy of the commonwealth is to conserve its waters for legitimate uses, [~~and to:~~] safeguard from pollution the uncontaminated waters of the commonwealth, prevent the creation of any new pollution in the waters of the commonwealth, and abate any existing pollution. This administrative regulation and 401 KAR 10 001, 10·026, 10 029, and 10·031[~~401 KAR 5 002, 5.026, 5·029, and 5 031~~] establish procedures to protect the surface waters of the commonwealth, and thus protect water resources. This administrative regulation establishes a methodology to implement the antidegradation policy contained in 401 KAR 10·029[~~401 KAR 5 029~~] by establishing procedures to control water pollution in waters affected by that policy.

Section 1. Categorization and Implementation. A flow chart outlining the procedures is incorporated by reference for informational purposes in this administrative regulation. These antidegradation procedures shall not preempt the power or authority of a local government to provide by ordinance for a higher level of protection through antidegradation implementation for a discharger located within that local government's jurisdiction to a surface water of the commonwealth. The following procedures shall govern implementation of the antidegradation policy of 401 KAR 10:029[~~401 KAR 5 029~~], Section 1, for a point source discharge. [~~A flow chart outlining the procedures is incorporated by reference for informational purposes in Section 3 of this administrative regulation. These antidegradation procedures shall not preempt the power or authority of a local government to provide by ordinance for a higher level of protection through antidegradation implementation for a discharger located within that local government's jurisdiction to a surface water of the commonwealth.~~] Surface waters shall be placed into one (1) of four (4) categories listed in this section and each category shall have implementation procedures as follows:

(1) Outstanding national resource water. Surface waters of the commonwealth categorized as outstanding national resource waters are listed in Table 1 of this subsection.

Table 1
SURFACE WATERS CATEGORIZED AS OUTSTANDING NATIONAL RESOURCE WATER

Stream	Segment	River Miles	County
Red River	Upstream to Island off SR 1067 to Downstream Wild River Boundary at SR 746	49 2-68.6	Menifee/Wolfe
Underground River System	Within Mammoth Cave National Park Boundary		Edmonson/ Hart/Barren
[~~Big~~] South Fork of Cumberland River	Downstream Wild River Boundary to Tennessee State line[~~Stateline~~]	45.0-55.2	McCreary
Surface Waters within Reelfoot Lake National Wildlife Refuge	Reelfoot Lake National Wildlife Refuge Proclamation Boundary in Kentucky	2040 Acres	Fulton
War Fork of Station Camp Creek	Basin above South Fork of Station Camp Creek to Steer Fork	0 0 to 13.8	Jackson
Marsh Creek	Mouth to 1 9 miles upstream of Kentucky 478	0 0 to 15 0	McCreary
Rock Creek	State border to White Oak Creek	4 1 to 21 9	McCreary
Rockcastle River	Lower end of Narrows to 0 2 miles downstream of Kentucky 80 bridge	8.5 to 21 8	Laurel/Pulaski

(a) Categorization criteria. A surface water shall be categorized as an outstanding national resource water if:

1. The surface water meets, at a minimum, the requirements for an outstanding state resource water as provided in 401 KAR 10·031[~~401 KAR 5.031~~], Section 8;[~~,~~] and

2. [~~if~~] The surface water demonstrates national ecological or recreational significance.

(b) Implementation procedure.

1. Water quality shall be maintained and protected in outstanding national resource water.

2. A new discharger or expanded discharge that[~~which~~] may result in permanent or long-term changes in water quality shall be[~~is~~] prohibited.

3. The cabinet may approve temporary or short-term changes in water quality if the changes to the outstanding national resource water do not have a[re] demonstrable impact on the ability of the water to support the designated uses.

(2) Exceptional water. Surface waters of the commonwealth categorized as exceptional water are listed in Table 2 of this subsection.

Table 2
SURFACE WATERS CATEGORIZED AS EXCEPTIONAL WATER

Stream	Segment	River Miles	County
BIG SANDY RIVER BASIN			
Hobbs Fork of Pigeonroost Fork of Wolf Creek	Mouth to Headwaters	0.0-3.8	Martin
Lower Pigeon Branch of Elkhorn Creek	Left Fork to Headwaters	0.6-1.9	Pike
Russell Fork of Levisa Fork of Big Sandy River	Clinch Field RR Yard off HWY 80 to Virginia State Line	14.9-16.5	Pike
Toms Branch of Elkhorn Creek	Mouth to Headwaters	0.0-1.6	Pike
Unidentified Tributary of Hobbs Fork	Hobbs Fork of Pigeonroost Fork to Headwaters	0.0-0.6	Martin
LITTLE SANDY RIVER BASIN			
Arabs Fork of Big Sinking Creek	Clay Fork to Headwaters	0.0-5.7	Elliott
Big Caney Creek	Grayson Lake to Headwaters	0.6 to 13.6	Elliott, Rowan
Big Sinking Creek of Little Sandy River	SR 986 to Clay Fork and Arab Fork	11.1-15.9	Carter, Elliott
Meadow Branch of Little Fork of Little Sandy River	Mouth to Headwaters	0.0-1.4	Elliott
Middle Fork of Little Sandy River	Mouth to Sheepskin Branch	0.0-3.4	Elliott
Nichols Fork of Little Fork of Little Sandy River	Green Branch to Headwaters	0.0-1.6	Elliott
Laurel Creek of Little Sandy River	Carter School Rd Bridge to Headwaters	7.7-14.7	Elliott, Rowan
LICKING RIVER BASIN			
Blackwater Creek of Licking River	Eaton Creek to Greasy Fork	3.2-11.1	Morgan
Blanket Creek of Licking River	Mouth to Unidentified Tributary	0.0-1.9	Pendleton
Botts Fork of Brushy Fork of Licking River	Mouth to Landuse Change	0.0-2.2	Menifee
Bowman Creek of Licking River	Mouth to Unidentified Tributary	0.0-6.0	Kenton
Brushy Fork of Meyers Creek	Cave Run Lake Backwaters to Headwaters	0.6-5.0	Menifee
Brushy Fork of South Fork of Grassy Creek	Mouth to Headwaters	0.0-5.8	Pendleton
Bucket Branch of North Fork of Licking River	Mouth to Headwaters	0.0-1.9	Morgan
Cedar Creek of Licking River	Mouth to North Branch of Cedar Creek	0.0-1.7	Robertson
Craney Creek of Licking River	Mouth to Headwaters	0.0-11.2	Morgan, Rowan
Devils Fork of North Fork of Licking River	Mouth to Headwaters	0.0-8.4	Elliott, Morgan
Flour Creek of Licking River	Mouth to Unidentified Tributary	0.0-2.2	Pendleton
Grovers Creek of Kincaid Creek	Kincaid Lake Backwaters to Unidentified Tributary	0.5-3.4	Bracken, Pendleton
Licking River	SR 211 to unnamed Rd off Slatey Point Rd	159.5-170.6	Bath, Rowan
Little South Fork of Big South Fork of Ohio River	Land Use Change to Headwaters	1.2 – 5.9	Boone
North Fork of Licking River	Cave Run Lake Backwaters to Devils Fork	9.9-14.2	Morgan
Sawyers Fork of Cruises Creek	Mouth to Headwaters	0.0-3.3	Kenton
Slabcamp Creek of Craney Creek of Licking River	Mouth to Headwaters	0.0-3.7	Rowan
Slate Creek of Licking River	Mouth to Mill Creek	0.0-13.6	Bath
South Fork Grassy Creek of Grassy Creek of Licking River	Mouth to Greasy Creek	0.0-19.8	Kenton, Pendleton
Unidentified Tributary of Shannon Creek of North Fork of Licking River	Mouth to Headwaters	0.0-2.2	Mason
Welch Fork of Brushy Fork of Licking River	Mouth to First Road Crossing	0.0-1.0	Menifee
West Creek of Licking River	Mouth to Headwaters	0.0-9.7	Harrison, Robertson

KENTUCKY RIVER BASIN			
Backbone Creek of Sixmile Creek of Kentucky River	Mouth to Scrabble Creek	0.0-1.7	Franklin, Henry, Shelby
Bear Branch of North Fork of Kentucky River	Above Sediment Pond to Headwaters	0.3-1.2	Perry
Big Double Creek of Red Bird River	Mouth to Headwaters	0 0-4 4	Clay
Bill Branch of Laurel Fork of Greasy Creek	Mouth to Right Fork and Left Fork Creek	0 0-0 3	Leslie
Billey Fork of Millers Creek	Land Use Change to Headwaters	2 6-8 8	Lee, Elliott
Bill Oak Branch of Left Fork of Buffalo Creek	Mouth to Headwaters	0 0-0 6	Owsley
Buffalo Creek of South Fork of Kentucky River	Mouth to Right Fork and Left Fork	0 0-1 6	Owsley
Cavanaugh Creek	South Fork of Station Camp Creek to Foxtown Rd	0 0-5.1	Jackson
Cherry Run of Boyd Run of North Elkhorn Creek	Mouth to Boyd Run	0 0-0 9	Scott
Chester Creek of Middle Fork of Red River	Mouth to Headwaters	0 0-2 8	Wolfe
Clear Creek of Kentucky River	Mouth to East Fork Clear Creek	0 0-9 0	Woodford
Clemons Fork of Buckhorn Creek	Mouth to Headwaters	0 0-4 8	Breathitt
Coles Fork of Buckhorn Creek	Mouth to Headwaters	0 0-6 3	Breathitt
Craig Creek of Kentucky River	Mouth to Unidentified Tributary	0.0-2.7	Woodford
Deep Ford Branch of Cutshin Creek	Above Pond to Headwaters	0.3-1.3	Leslie
Drennon Creek of Kentucky River	Fivemile Creek to Town Branch	8.7-12 2	Henry
East Fork of Indian Creek of Indian Creek of Red River River	West Fork of Indian Creek to Headwaters	0.0-9.1	Menifee
Elisha Creek of Red Bird River	Land Use Change (Residential) to the confluence of Right Fork and Middle Fork Elisha Creek	0 8-1 8	Leslie
Emily Run of Drennon Creek	Mouth to Unidentified Tributary	0 0-3 0	Henry
Evans Fork of Billey Fork of Millers Creek	Mouth to Headwaters	0 0-3 0	Estill
Falling Rock Branch of Clemons Fork of Buckhorn Creek	Mouth to Headwaters	0.0-0 7	Breathitt
Gilberts Creek of Kentucky River	Mouth to Unidentified Tributary	0.0 to 2 6	Anderson
Gladie Creek of Red River	Land Use Change to Long Branch	0.35 to 7.3	Menifee
Goose Creek of South Fork of Kentucky River	Mouth to Laurel Creek	0 0-9.1	Clay, Leslie
Griers Creek of Kentucky River	Kentucky River Backwaters to Unidentified Tributary	0.1 to 3 5	Woodford
Grindstone Creek of Kentucky River	Kentucky River Backwaters to Headwaters	0 1 to 1 9	Franklin
Hardwick Creek of Red River	Mouth to Little Hardwick Creek	0 0-3 2	Powell
Hell For Certain of Middle Fork of Red River	Mouth to Big Fork	0 0-2 1	Leslie
Hines Creek of Kentucky River	Kentucky River Backwaters to confluence with Unidentified Tributary	0 1 to 1.9	Madison
Honey Branch of Greasy Creek of Middle Fork of Kentucky River	Mouth to Headwaters	0 0-1 4	Leslie
Hopper Cave Branch of Cavanaugh Creek	Mouth to Headwaters	0.0-1 8	Jackson
Indian Creek of Eagle Creek	Mouth to Headwaters	0.0 to 5.4	Carroll
Indian Fork of Sixmile Creek of Kentucky River	Mouth to Headwaters	0 0-3 3	Shelby
John Carpenter Fork of Clemons Fork of Buckhorn Creek	Mouth to Headwaters	0 0-1.2	Breathitt
Katies Creek of Red Bird River	Mouth to Headwaters	0 0-4.0	Clay
Laurel Fork of Left Fork Buffalo Creek of Buffalo Creek	Cortland Fork to Big Branch	2.1-3 8	Owsley
Left Fork of Big Double Creek of Kentucky River	Mouth to Headwaters	0 0-1 5	Clay
Line Fork of North Fork of Kentucky River	Defeated Creek to Headwaters	12.2-28 7	Letcher
Little Middle Fork of Elisha Creek of Red	Mouth to Headwaters	0 0-0 75	Clay

Bird River			
Little Millseat Branch of Clemons Fork of Buckhorn Creek	Mouth to Headwaters	0.0-1.2	Breathitt
Little Sixmile Creek of Sixmile Creek of Kentucky River	Mouth to Headwaters	0.0-5.3	Henry
Lower Howard Creek of Kentucky River	Mouth to West Fork	0 0-2.7	Clark
Lulbegrud Creek of Red River	Mouth to Falls Branch	0 0-7.3	Clark, Powell
Middle Fork of Kentucky River	Mouth to Upper Twin Creek	0 0-12 7	Lee, Owsley
Middle Fork of Kentucky River	Hurts Creek to Greasy Creek	73 7-84 0	Leslie
Middle Fork of Red River	South Fork of Red River to Natural Bridge State Park Lake	1 8-8 3	Powell
Mikes Branch of Laurel Fork of Left Fork of Buffalo Creek	Mouth to Headwaters	0 0-0 7	Owsley
Mill Creek of Kentucky River	Upstream of Mouth to Headwaters	0 5-8 3	Owen
Millseat Branch of Clemons Fork of Buckhorn Creek	Mouth to Headwaters	0 0-1 9	Breathitt
Muddy Creek of Kentucky River	Elliston, Kentucky to Viney Creek	13 5-20 7	Madison
Musselman Creek of Eagle Creek	Mouth to Headwaters	0 0-9 0	Grant
Red Bird River of South Fork of Kentucky River	Mouth to Big Creek	0.0-15.3	Clay
Right Fork of Buffalo Creek of Kentucky River	Mouth to Headwaters	0 0-11.75	Owsley
Right Fork of Elisha Creek of Redbird River	Mouth to Headwaters	0 0-3 3	Leslie
Roaring Fork of Lewis Fork of Buckhorn Creek	Mouth to Headwaters	0 0-0.9	Breathitt
Rock Lick Creek of South Fork of Station Camp Creek	Mouth to Headwaters	0 0-9 6	Jackson
Sand Ripple Creek of Kentucky River	Kentucky River Backwaters to Headwaters	0.1-3 9	Henry
Severn Creek of Kentucky River	Kentucky River Backwaters to North Fork of Severn Creek	1.35-3 0	Owen
Shaker Creek of Kentucky River	Near Mouth to Shawnee Run	0.1-1.4	Mercer
Shelly Rock Fork of Millseat Branch of Clemons Fork	Mouth to Headwaters	0.0-0 6	Breathitt
Sixmile Creek of Kentucky River	Little Sixmile Creek to Dam	6.9-15 2	Henry
South Fork of Kentucky River	Mouth to Sexton Creek	0.0-27 9	Owsley
South Fork of Red River	Mouth to Sandlick Fork	0.0-4 3	Powell
South Fork of Station Camp Creek of Kentucky River	Mouth to Rock Lick Creek	0.0-9.7	Jackson
Spruce Branch of Redbird River	Mouth to Headwaters	0.0-1.1	Clay
Station Camp Creek of Kentucky River	Landuse Change to South Fork of Station Camp Creek	18 0-22 8	Estill
Steeles Run of Elkhorn Creek	Mouth to Unidentified Tributary	0.0-4 2	Fayette
Steer Fork of War Fork of Station Camp Creek	Mouth to Headwaters	0.0-2.7	Jackson
Sturgeon Creek of Kentucky River	Duck Fork to Little Sturgeon Creek	1.3-13.7	Lee, Owsley
Sugar Creek of Redbird River	Landuse Change to Headwaters	0 6-5.4	Leslie
Sulphur Creek of Elkhorn Creek	Mouth to Headwaters	0.0-5 2	Franklin
Unidentified Tributary of Cawood Branch of Beech Fork	Mouth to Headwaters	0 0-2.1	Leslie
Unidentified Tributary of Cedar Creek of Kentucky River	Mouth to Headwaters	0 0-1 4	Owen
Unidentified Tributary of Glenns Creek of Kentucky River	Mouth to Headwaters	0.0 to 1 9	Woodford
Unidentified Tributary of Jacks Creek of Kentucky River	Mouth to Headwaters	0 0-1.15	Madison
Unidentified Tributary of Kentucky River	Land Use Change to Headwaters	0.1-1.4	Franklin
Unidentified Tributary of Line Fork of North Fork of Kentucky River (LCW)	Mouth to Headwaters	0.0-0 6	Letcher
War Fork of Station Camp Creek	Mouth to Headwaters	0 0-13 9	Jackson
Watches Fork of Laurel Fork of Left Fork of Buffalo Creek	Mouth to Headwaters	0 0-0 9	Owsley

Wolfpen Creek of Red River	Mouth to Headwaters	0 0-3 2	Menifee
SALT RIVER BASIN			
Brashears Creek of Salt River	Guist Creek to Bullskin and Clear Creek	13.0-25 9	Shelby, Spencer
Cedar Creek of Salt River	Mouth to Greens Branch	0.0-5.2	Bullitt
Chaplin River of Salt River	Thompson Creek to Cornishville, KY	40 9-54.2	Washington
Doctors Fork of Chaplin River	Mouth to Begley Branch	0 0-3 8	Boyle
Guist Creek of Brashears Creek	Mouth to Jeptha Creek	0 0-15 7	Spencer
Harts Run of Wilson Creek of Rolling Fork of Salt River	Mouth to Headwaters	0 0-2 4	Bullitt
Indian Creek of Thompson Creek of Chaplin River of Salt River	Mouth to Unidentified Tributary	0 0-0 9	Mercer
Lick Creek of Long Lick Creek of Beech Fork of Salt River	Mouth to 0 1miles below Dam	0 0-4 1	Washington
Otter Creek of Rolling Fork of Salt River	Landuse Change to confluence of East Fork and Middle Fork Otter Creek	1.7-2 7	Larue
Overalls Creek of Wilson Creek of Rolling Fork of Salt River	Mouth to Headwaters of Middle Fork of Overalls Creek	0 0-3 0	Bullitt
Salt Lick Creek of Rolling Fork of Salt River	Mouth to Headwaters	0.0-8.7	Larue, Marion
Sulphur Creek of Chaplin River	Mouth to confluence of Cheese Lick and Brush Creek	0.0-10 0	Anderson, Mercer, Washington
Unidentified Tributary of Glens Creek of Chaplin River	Mouth to Headwaters	0 0-2.3	Washington
West Fork of Otter Creek of Rolling Fork of Salt River	Mouth to Headwaters	0 0-5.4	Larue
Wilson Creek of Rolling Fork of Salt River	Mouth to Headwaters	0.0-18 4	Bullitt, Nelson
GREEN RIVER BASIN			
Beaverdam Creek of Green River	Mouth to Headwaters	0.0-14.5	Edmonson
Big Brush Creek of Green River	Brush Creek to Poplar Grove Branch	13 0 to 17 4	Green
Cane Run of Nolin River	Nolin River Lake Backwaters to Headwaters	1.0-6 6	Hart
Caney Fork of Peter Creek	Mouth to Headwaters	0 0-6.7	Barren
Clifty Creek of Rough River	Barton Run to Western Kentucky Parkway	7.3-17.2	Grayson
Clifty Creek of Wolf Lick Creek	Little Clifty Creek to Sulphur Lick	7 6-13.4	Todd
East Fork of Little Barren River	Red Lick Creek to Flat Creek	19.3-20 6	Metcalfe
Elk Lick Creek	Duck Lick Creek to Barren Fork Creek and Edger Creek	3 6 to 11 8	Allen
Ellis Fork of Damron Creek	Mouth to Headwaters	0.0-3.2	Adair, Russell
Falling Timber Creek of Skaggs Creek	Landuse Change to Headwaters	8 0-15 2	Barren, Metcalfe
Fiddlers Creek of North Fork of Rough River	Mouth to Headwaters	0 0-6 0	Breckinridge
Forbes Creek of Buck Creek of East Fork of Pond River	Mouth to Unidentified Tributary	0 0-4 4	Christian
Gasper River of Barren River	Clear Fork to Wigginton Creek	17 2-35 6	Logan, Warren
Goose Creek of Green River	Mouth to Little Goose Creek	0 0-8 4	Casey, Russell
Green River	Downstream Mammoth Cave National Park Boundary to Lynn Camp Creek	183 7-250 3	Edmonson, Hart
Halls Creek of Rough River	Unidentified Tributary to Headwaters	7.1-9.7	Ohio
Lick Creek of West Fork of Drakes Creek	Mouth to Headwaters	0.0-10 2	Simpson
Linders Creek of Rough River	Mouth to Sutzer Creek	0.0-8.0	Hardin
Little Beaverdam Creek of Green River	Mouth to SR 743	0 0-11.7	Edmonson, Warren
Little Short Creek of Rough River	Mouth to Headwaters	0 0-3 3	Grayson
Lynn Camp Creek of Green River	Mouth to Lindy Creek	0 0-8.5	Hart
McFarland Creek of West Fork of Pond River	Grays Branch to Unidentified Tributary	1.5-5 8	Christian
Meeting Creek of Rough River	Little Meeting Creek to Petty Branch	5 2-13.8	Grayson, Hardin
Muddy Creek of Caney Creek of Rough River	Landuse Change to Headwaters	13.0-15 5	Ohio

North Fork of Rough River	Buffalo Creek to Reservoir Dam	23 4-28 1	Breckinridge
Peter Creek of Barren River	Caney Fork to Dry Fork	11.5-18 4	Barren
Pond Run of Rough River	Landuse Change to Headwaters	1.4-6.8	Breckinridge, Ohio
Puncheon Creek	Mouth to Tennessee State Line	0 0 to 4.3	Logan
Rough River	Linders Creek to Vertrees Creek	138 0-149.4	Hardin
Russell Creek of Green River	Mouth to Columbia WWTP	0 0-40.9	Green, Adair
Russell Creek of Green River	Reynolds Creek to confluence with Hudson Creek and Mount Olive Creek	56 8-66 3	Adair, Russell
Sixes Creek of Indian Camp Creek	Wild Branch to Headwaters	1 9-7.6	Ohio
Sulphur Branch of Alexander Creek	Mouth to Headwaters	0 0-3 0	Edmonson
Thompson Branch of West Fork of Drakes Creek	Webb Branch to Tennessee State Line	0 3-1.5	Simpson
Trammel Fork of Drakes Creek	Mouth to Tennessee State Line	0 0-30.6	Allen, Warren
Unidentified Tributary of Green River	Landuse Change to Headwaters	1.0-3 3	Adair
Unidentified Tributary of White Oak Creek	Hovious Rd Crossing to SR 76	0 4-2.9	Adair
West Fork of Pond River	Unidentified Tributary to East Branch of Pond River	12 4-22 5	Christian
LOWER CUMBERLAND RIVER BASIN			
Crooked Creek of Cumberland River	Energy Lake Backwaters to Headwaters	3.0-9.4	Trigg
Donaldson Creek of Cumberland River	Craig Branch to Unidentified Tributary	3 2-7.2	Trigg
Elk Creek of Red River of Cumberland River	Tennessee State Line to Dry Branch	7.5-22 3	Todd
Sugar Creek of Cumberland River	Lick Creek to Unidentified Tributary	2.2-6.9	Livingston
West Fork of Red River of Cumberland River	Tennessee State Line to Montgomery Creek	16.1-26.5	Christian
Whippoorwill Creek of Red River of Cumberland River	Mouth to Vicks Branch	0.0-13 2	Logan
TENNESSEE RIVER BASIN			
Blood River of Kentucky Lake (Tennessee River)	McCullough Fork to Tennessee State Line	12.5-16 0	Calloway
Clarks River of Tennessee River	Persimmon Slough to Middle Fork Creek	28 7-30 7	Marshall
Grindstone Creek of Kentucky Lake (Blood River of Tennessee River)	Kentucky Lake Backwaters to Headwaters	0 6-2.9	Calloway
Panther Creek of Kentucky Lake (Blood River of Tennessee River)	Kentucky Lake Backwaters to Headwaters	0 5-5.7	Calloway
Soldier Creek of West Fork of Clarks River	Mouth to South Fork of Soldier Creek	0 0-5.7	Marshall
Sugar Creek of Kentucky Lake (Tennessee River)	Kentucky Lake Backwaters to Buzzard Roost Road	1 9-3.1	Calloway
Sugar Creek of West Fork Clarks River	Mouth to Unnamed Reservoir	0 0-4 2	Graves
Trace Creek of West Fork of Clarks River	Mouth to Neeley Branch	0 0-3 3	Graves
Unidentified Tributary of Panther Creek of West Fork of Clarks River	Mouth to Headwaters	0 0-2.1	Graves
West Fork of Clarks River	Soldier Creek to Duncan Creek	20.1-23 4	Graves
Wildcat Creek of Kentucky Lake (Blood River of Tennessee River)	Ralph Wright Road Crossing to Headwaters	3.1-6.3	Calloway
TRADEWATER RIVER BASIN			
East Fork of Flynn Fork of Tradewater River	Landuse Change to Headwaters	2 1-4 6	Caldwell
Piney Creek of Tradewater River	Lake Beshear Backwaters to Headwaters	4 5-10 2	Caldwell, Christian
Sandlick Creek of Tradewater River	Camp Creek to Headwaters	4 9-8 6	Christian
Tradewater River	Dripping Springs Branch to Buntin Lake Dam	123 2-131.1	Christian
Unidentified Tributary of Piney Creek of Tradewater River	Mouth to Headwaters	0.0-2.7	Caldwell
Unidentified Tributary of Sandlick Creek of Tradewater River	Mouth to Headwaters	0.0-1.4	Christian
OHIO RIVER BASIN (Minor Tributaries)			

Crooked Creek	Rush Creek to City Lake Dam	18 0-26 4	Crittenden
Double Lick Creek of Woolper Creek	Mouth to Headwaters	0 0-3 4	Boone
Garrison Creek	Mouth to Headwaters	0.0-4 85	Boone
Kinniconick Creek	McDowell Creek to Headwaters	5.0-50 9	Lewis
Little South Fork of Big South Fork	Land Use Change to Headwaters	1.2-5.9	Boone
Middle Fork of Massac Creek	Hines Road to Headwaters	3 1-6 4	McCracken
Second Creek	Ohio River Backwaters to Headwaters	0 4-1 4	Boone
Unidentified Tributary of Big Sugar Creek	I-71 to Headwaters	1 0-1 8	Gallatin
Unidentified Tributary of Corn Creek	Mouth to Headwaters	0 0-2 0	Trimble
Unidentified Tributary of Massac Creek	Mouth to Headwaters	0.0-1 7	McCracken
West Fork of Massac Creek	SR 725 to Little Massac Creek	3 6-6 2	McCracken
Yellowbank Creek	Ohio River Backwaters to Headwaters	1 5-12.0	Breckinridge
LAKE			
Metropolis	Entire Lake	-	McCracken
MISSISSIPPI RIVER BASIN (Main Stem and Minor Tributaries)			
Jackson Creek	Mouth to Headwaters	0 0-2 6	Graves
Obion Creek	Hurricane Creek to Little Creek	25 2-35.5	Hickman
Terrapin Creek	Tennessee State Line to Headwaters	2.8-7.0	Graves
LAKES			
Murphy's Pond	Entire Pond and Preserve Area	-	Hickman
Swan	Entire Lake		Ballard
UPPER CUMBERLAND RIVER BASIN			
Bad Branch of Poor Fork of Cumberland River	Mouth to Headwaters	0 0-3 0	Letcher
Bark Camp Creek of Cumberland River	Mouth to Martins Fork	0.0-4.0	Whitley
Beaver Creek of Cumberland River	Lake Cumberland Backwaters to confluence of Freeman Fork and Middle Fork	2 0-6 5	McCreary
Bee Lick Creek of Brushy Creek of Buck Creek	Mouth to Warren Branch	0 0-5 7	Pulaski
Brownies Creek of Cumberland River	Blacksnake Branch to Headwaters	9 3-16 7	Bell, Harlan
Brush Creek of Roundstone Creek	Wolf Creek to Reemergence of Sinking Creek	1 1-7 6	Rockcastle
Brushy Creek of Buck Creek	Mouth to Headwaters	0 0-16 5	Pulaski
Buck Creek of Cumberland River	0 8 river mile upstream of confluence of Hurricane Creek to Lake Cumberland Backwaters	8.3-63 3	Lincoln, Pulaski
Bunches Creek of Cumberland River	Mouth to confluence of Amos Falls Branch and Seminary Branch	0.0-3 5	Whitley
Cane Creek of Rockcastle River	Mouth to Headwaters	0 0-11.9	Laurel
Clifty Creek of Brushy Creek of Buck Creek	Mouth to Rocky Branch	0 0-2 7	Pulaski
Cogur Fork of Indian Creek	Mouth to Headwaters	0 0-7 9	McCreary
Cumberland River	Wild River Boundaries	558 5-575.1	McCreary, Whitley
Dog Slaughter Creek of Cumberland River	Mouth to confluence of North Fork and South Fork of Dog Slaughter Creek	0 0-1 1	Whitley
Eagle Creek of Cumberland River	Mouth to Headwaters	0 0-6 7	McCreary
Fugitt Creek of Clover Fork of Cumberland River	Landuse Change to Headwaters	0.5-4 6	Harlan
Horse Lick Creek of Rockcastle River	Mouth to Clover Bottom	0.0-12 4	Jackson, Rockcastle
Howards Creek of Illwill Creek of Wolf River	Dale Hollow Reservoir Backwaters to Headwaters	0.6-4.6	Clinton
Indian Creek of Cumberland River	Laurel Fork to Barren Fork	2.3-6 8	McCreary
Jackie Branch of Bark Camp Creek	Mouth to Headwaters	0 0-1.7	Whitley
Kilburn Fork of Indian Creek	Mouth to Headwaters	0.0-7.2	McCreary
Laurel Creek of Marsh Creek	Mouth to Laurel Creek Dam	0 0-9 0	McCreary
Laurel Fork of Clear Fork of Cumberland River	Tennessee State Line to Tiny Branch	4 7-13.1	Whitley

Laurel Fork of Middle Fork of Rockcastle River	Mouth to Headwaters	0.0-12.4	Jackson
Left Fork of Fugitt Creek of Clover Fork of Cumberland River	Mouth to Headwaters	0.0-1.5	Harlan
Little South Fork of Cumberland River	Lake Cumberland Backwaters to Langham Branch	2.7-35.6	McCreary, Wayne
Marsh Creek of Cumberland River	Laurel Creek to Headwaters	8.8-26.3	McCreary
Martins Fork of Cumberland River	Rough Branch to Headwaters	27.3-37.3	Harlan
McFarland Creek of Cumberland River	Little McFarland Creek to Spring Branch	0.8-6.2	Monroe
Meshack Creek of Cumberland River	Mouth to Pitcock Branch	0.0-2.8	Monroe
Middle Fork of Rockcastle River	Mouth to confluence of Indian Creek and Laurel Fork	0.0-7.9	Jackson
Mud Camp Creek of Cumberland River	Mouth to Collins Branch	0.0-1.2	Cumberland
Mud Camp Creek of Cumberland River	Unidentified Tributary to Headwaters	3.8-8.8	Cumberland, Monroe
Otter Creek of Cumberland River	Lake Cumberland Backwaters to Carpenter Fork	15.6-24.3	Wayne
Poor Fork of Cumberland River	Franks Creek to Headwaters	41.4-51.7	Letcher
Presley House Branch of Poor Fork of Cumberland River	Mouth to Headwaters	0.0-1.5	Letcher
Puncheoncamp Branch of Rock Creek of South Fork of Cumberland River	Mouth to Headwaters	0.0-1.9	McCreary
Rock Creek of South Fork of Cumberland River	White Oak Creek to Tennessee State Line	4.1-21.6	McCreary
Rockcastle River	Wild River Boundaries	8.8-24.8	Laurel, Pulaski
Shillalah Creek of Clear Fork of Yellow Creek	Mouth to Headwaters	0.0-5.5	Bell
Sinking Creek of Rockcastle River	Mouth to White Oak Creek	0.0-9.9	Laurel
Sulphur Creek of Wolf River of Obey River	Dale Hollow Reservoir Backwaters to Headwaters	1.4-5.1	Clinton
South Fork of Dog Slaughter Creek of Cumberland River	Mouth to Headwaters	0.0-4.6	Whitley
South Fork of Rockcastle River	Mouth to White Oak Creek	0.0-5.8	Laurel
Unidentified Tributary (across from Hemlock Grove) of Rock Creek of South Fork of Cumberland River	Mouth to Headwaters	0.0-1.9	McCreary
Unidentified Tributary (RMI 17.0 of Rock Creek) of Rock Creek of South Fork of Cumberland River	Mouth to Headwaters	0.0-1.15	McCreary
Watts Branch of Rock Creek of South Fork of Cumberland River	Mouth to Headwaters	0.0-2.6	McCreary
Watts Creek of Cumberland River	Camp Blanton Reservoir to Headwaters	2.2-4.4	Harlan

~~[Table 2~~
~~SURFACE WATERS CATEGORIZED AS EXCEPTIONAL WATER~~

~~Stream~~	~~Segment~~	~~River Miles~~	~~County~~
~~BIG SANDY RIVER BASIN~~			
~~Hobbs Fork*~~	~~Mouth to Headwaters~~	~~0.0-3.8~~	~~Martin~~
~~Hobbs Fork Unidentified Tributary*~~	~~Hobbs Fork to Headwaters~~	~~0.0-0.55~~	~~Martin~~
~~Lower Pigeon Branch*~~	~~Left Fork to Headwaters~~	~~0.5-1.7~~	~~Pike~~
~~Russell Fork*~~	~~Clinch Field RR Yard off HWY 80 to Virginia Stateline~~	~~14.4-16~~	~~Pike~~
~~Toms Branch*~~	~~Mouth to Headwaters~~	~~0.0-1.4~~	~~Pike~~
~~LITTLE SANDY RIVER BASIN~~			
~~Arabs Fork*~~	~~Clay Fork to Headwaters~~	~~0.0-4.7~~	~~Carter~~
~~Big Caney Creek*~~	~~Grayson Lake to Headwaters~~	~~0.0-14.9~~	~~Elliott~~
~~Big Sinking Creek*~~	~~SR 986 to Clay Fork and Arab Fork~~	~~10.7-15.2~~	~~Carter~~
~~Meadow Branch*~~	~~Mouth to Headwaters~~	~~0.0-1.4~~	~~Elliott~~
~~Middle Fork Little Sandy River*~~	~~Mouth to Sheepskin Branch~~	~~0.0-3.6~~	~~Elliott~~
~~Nichols Fork*~~	~~Green Branch to Headwaters~~	~~0.0-1.9~~	~~Elliott~~
~~Laurel Creek*~~	~~Carter School Rd Bridge to Headwaters~~	~~7.6-14.4~~	~~Elliott~~
~~LICKING RIVER BASIN~~			

Blackwater Creek*	Eaton Creek to Greasy Fork	3.8-11.4	Morgan
Botts Fork	Mouth to Landuse Change	0.0-2.1	Menifee
Brushy Fork	Cave Run Lake Backwaters to Headwaters	0.6-5.0	Menifee
Brushy Fork*	Mouth to Headwaters	0.0-5.7	Pendleton
Bucket Branch*	Mouth to Headwaters	0.0-1.9	Morgan
Craney Creek	Mouth to Headwaters	0.0-10.0	Rowan
Devils Fork*	Mouth to Headwaters	0.0-7.8	Morgan
Grovers Creek*	Kincaid Lake Backwaters to Unidentified Tributary	0.5-3.4	Pendleton
Licking River	SR 211 to unnamed Rd off Slatey Point Rd	154.5-165.0	Bath/Rowan
North Fork of Licking River*	Cave Run Lake Backwaters to Devils Fork	9.9-14.2	Morgan
Slabcamp Creek	Mouth to Headwaters	0.0-3.4	Rowan
South Fork Grassy Creek*	Mouth to Greasy Creek	0.0-19.6	Pendleton
Welch Fork*	Mouth to First Road Crossing	0.0-1.0	Menifee
West Creek*	Mouth to Headwaters	0.0-9.5	Robertson
KENTUCKY RIVER BASIN			
Big Double Creek*	Mouth to Headwaters	0.0-6.5	Clay
Bill Branch*	Mouth to Right Fork and Left Fork Creek	0.0-2.2	Leslie
Buffalo Creek*	Mouth to Right Fork and Left Fork	0.0-1.6	Owsley
Cavanaugh Creek*	South Fork of Station Camp Creek to Foxtown Rd	0.0-5.3	Jackson
Cawood Branch*	Mouth to Headwaters	0.0-2.1	Leslie
Cedar Creek Unidentified Tributary*	Mouth to Headwaters	0.0-1.4	Owen
Chester Creek*	Mouth to Headwaters	0.0-2.8	Wolfe
Clear Creek*	Mouth to East Fork Clear Creek	0.0-8.8	Woodford
Clemons Fork*	Mouth to Headwaters	0.0-4.7	Breathitt
Coles Fork*	Mouth to Headwaters	0.0-5.5	Breathitt
Drennon Creek*	Flat Bottom Road Crossing to Town Branch	10.5-11.9	Henry
East Fork of Indian Creek*	West Fork of Indian Creek to Headwaters	0.0-8.5	Menifee
Elisha Creek*	Elisha Creek Rd Crossing to Right Fork and Middle Fork Elisha Creek	0.95-1.7	Leslie
Emily Run	Mouth to Unidentified Tributary	0.0-3.9	Henry
Evans Fork*	Mouth to Headwaters	0.0-2.9	Estill
Falling Rock Branch*	Mouth to Headwaters	0.0-0.6	Breathitt
Gladie Creek*	Mouth to Headwaters	0.0-8.4	Menifee
Glenns Creek Unidentified Tributary	Landuse Change to Headwaters	0.2-1.3	Woodford
Goose Creek	Mouth to Laurel Creek	0.0-9.3	Clay
Gnors Creek*	Urban Area to Unidentified Tributary	2.0-3.4	Woodford
Grindstone Creek*	Mouth to Headwaters	0.0-2.2	Franklin
Hardwick Creek	Mouth to Little Hardwick Creek	0.0-3.2	Powell
Hell For Certain	Mouth to Big Fork	0.0-2.1	Leslie
Hines Creek*	Mouth to Hines Creek Road Crossing	0.0-2.4	Madison
Honey Branch	Mouth to Headwaters	0.0-1.4	Leslie
Hopper Cave* Branch	Mouth to Headwaters	0.0-1.6	Jackson
Indian Creek*	Backwater Kentucky River to Headwaters	0.55-4.7	Carroll
Indian Fork*	Mouth to Headwaters	0.0-3.3	Shelby
John Carpenter Fork*	Mouth to Headwaters	0.0-1.5	Breathitt
Left Fork Big Double Creek*	Mouth to Headwaters	0.0-1.5	Clay
Line Fork*	Defeated Creek to Headwaters	11.6-27.5	Letcher
Line Fork Unidentified Tributary* (LCW)	Mouth to Headwaters	0.0-0.55	Letcher
Little Millseat Branch*	Mouth to Headwaters	0.0-1.2	Breathitt
Little Sixmile Creek*	Mouth to Headwaters	0.0-5.2	Henry
Lulbegrud Creek	Mouth to Falls Branch	0.0-7.3	Clark/Powell
Middle Fork of Kentucky River	Mouth to Upper Twin Creek	0.0-12.5	Lee
Middle Fork of Kentucky River	Hyden, Kentucky to Greasy Creek	76.1-84.0	Leslie
Middle Fork of Red River	South Fork Red River to Natural Bridge State Park Lake	1.8-8.3	Powell
Mill Creek*	Mouth to Headwaters	0.0-8.3	Owen

Millseat Branch*	Mouth to Headwaters	0.0-1.0	Breathitt
Muddy Creek*	Elliston, Kentucky to Viney Creek	13.4-20.2	Madison
Musselman Creek*	Mouth to Headwaters	0.0-8.4	Grant
Red Bird River	Mouth to Big Creek	0.0-15.0	Clay
Right Fork of Buffalo Creek*	Mouth to Headwaters	0.0-11.2	Owsley
Roaring Fork*	Mouth to Headwaters	0.0-0.85	Breathitt
Sand Ripple Creek*	Mouth to Headwaters	0.0-3.9	Henry
Severn Creek*	Mouth to North Fork Severn Creek	0.0-2.8	Owen
Shelly Rock Fork*	Mouth to Headwaters	0.0-0.6	Breathitt
Sixmile Creek*	Little Sixmile to Dam	6.0-14.7	Henry
South Fork of Kentucky River	Mouth to Sexton Creek	0.0-27.7	Owsley
South Fork of Red River	Mouth to Sandlick Fork	0.0-3.9	Powell
South Fork of Station Camp Creek*	Mouth to Rock Lick Creek	0.0-9.6	Jackson
Spruce Branch*	Mouth to Headwaters	0.0-1.1	Leslie
Station Camp Creek*	Landuse Change to South Fork Station Camp Creek	19.0-22.3	Estill
Steer Fork*	Mouth to Headwaters	0.0-2.9	Jackson
Sturgeon Creek*	Duck Fork to Little Sturgeon Creek	1.3-13.7	Lee
Sugar Creek*	Landuse Change to Headwaters	0.8-3.8	Leslie
War Fork*	Mouth to Headwaters	0.0-13.7	Jackson
Wolfpen Creek*	Mouth to Headwaters	0.0-3.2	Menifee
SALT RIVER BASIN			
Brashears Creek	Guist Creek to Bullskin and Clear Creek	13.0-25.5	Shelby
Cedar Creek*	Mouth to Greens Branch	0.0-5.1	Bullitt
Chaplin River*	Thompson Creek to Cornishville, KY	40.1-53.7	Washington
Guist Creek	Mouth to Jeptha Creek	0.0-15.4	Spencer
Harts Run*	Mouth to Headwaters	0.0-2.3	Bullitt
Otter Creek*	Landuse Change to East Fork and Middle Fork Otter Creek	1.7-2.7	Larue
Overalls Creek*	Mouth to Headwaters	0.0-1.3	Bullitt
Salt Lick Creek*	Mouth to Headwaters	0.0-8.4	Marion
Sulphur Creek*	Mouth to Chesse Lick and Brush Creek	0.0-9.7	Anderson
West Fork Otter Creek*	Mouth to Headwaters	0.0-4.7	Larue
Wilson Creek*	Mouth to Headwaters	0.0-17.0	Bullitt
GREEN RIVER BASIN			
Beaverdam Creek*	Mouth to Headwaters	0.0-14.1	Edmonson
Cane Run*	Nolin River Backwaters to Headwaters	1-6.5	Hart
Caney Fork*	Mouth to Headwaters	0.0-6.6	Barren
Clifty Creek*	Barton Run to Western Kentucky Parkway	7.3-17.2	Grayson
Clifty Creek*	Little Clifty Creek to Sulphur Lick	7.7-13.2	Todd
East Fork Little Barren River*	Rod Lick Creek to Flat Creek	19-20.2	Metcalfe
Ellis Fork*	Mouth to Headwaters	0.0-3.2	Adair
Falling Timber Creek*	Landuse Change to Headwaters	7-15.5	Metcalfe
Fiddlers Creek*	Mouth to Headwaters	0.0-5.8	Breckinridge
Forbes Creek*	Mouth to Unidentified Tributary	0.0-3.0	Christian
Gasper River*	Clear Fork to Wigginton Creek	17.0-35.2	Logan
Goose Creek*	Mouth to Little Goose Creek	0.0-8.1	Casey
Green River	Downstream Mammoth Cave National Park Boundary to Lynn Camp Creek	181.7-207.8	Edmonson
Green River Unidentified Tributary*	Landuse Change to Headwaters	0.8-3.2	Adair
Halls Creek*	Unidentified Tributary to Headwaters	9.6-12.1	Ohio
Lick Creek*	Mouth to Headwaters	0.0-9.9	Simpson
Linders Creek*	Mouth to Sutzer Creek	0.0-7.7	Hardin
Little Beaverdam Creek	Mouth to SR 743	0.0-11.3	Warren
Little Short Creek*	Mouth to Headwaters	0.0-3.0	Grayson
Lynn Camp Creek*	Mouth to Lindy Creek	0.0-8.3	Hart
McFarland Creek*	Grays Branch to Unidentified Tributary	1.4-4.8	Christian

Meeting Creek*	Little Meeting Creek to Petty Branch	5.2-13.8	Hardin
Muddy Creek*	Landuse Change to Headwaters	13.0-15.5	Ohio
North Fork Rough River*	Buffalo Creek to Reservoir Dam	23.44-28.1	Breckinridge
Peter Creek*	Caney Fork to Dry Fork	11.6-18.5	Barren
Pond Run*	Landuse Change to Headwaters	1.4-6.8	Breckinridge/Ohio
Rough River*	Linders Creek to Vertrees Creek	136.9-147.8	Hardin
Russell Creek*	Mouth to Columbia WWTP	0.0-40.0	Adair
Russell Creek*	Reynolds Creek to Headwaters	55.9-68.2	Adair
Sixes Creek*	Wild Branch to Headwaters	2.0-7.5	Ohio
Sulphur Branch*	Mouth to Headwaters	0.0-2.0	Edmonson
Trammel Fork*	Mouth to Tennessee Stateline	0.0-30.15	Allen
West Fork Pond River*	Unidentified Tributary to East Branch Pond River	12.7-22.5	Christian
White Oak Creek Unidentified Tributary*	Hovious Rd Crossing to SR 76	0.4-3.0	Adair
LOWER CUMBERLAND RIVER BASIN			
Crooked Creek*	Lake Barkley Backwaters to Headwaters	4.0-9.4	Trigg
Donaldson Creek*	Craig Branch to Unidentified Tributary	6.9-10.3	Trigg
Elk Creek*	Tennessee Stateline to Dry Branch	7.5-9.8	Logan
Sugar Creek*	Lick Creek to Unidentified Tributary	2.1-6.7	Livingston
West Fork of Red River*	Tennessee Stateline to Montgomery Creek	16.1-26.5	Christian
Whippoorwill Creek*	Mouth to Vicks Branch	0.0-13.0	Logan
TENNESSEE RIVER BASIN			
Blood River*	McCullough Fork to Tennessee Stateline	12.2-15.65	Calloway
Clarks River	Persimmon Slough to Middle Fork Creek	26.6-28.4	Marshall
Grindstone Creek*	Mouth to Headwaters	0.0-2.3	Calloway
Panther Creek*	Mouth to Headwaters	0.0-5.1	Calloway
Panther Creek*	Channelization to Impoundment	1.1-6.0	Graves
Panther Creek Unidentified Tributary*	Mouth to Headwaters	0.0-2.1	Graves
Soldier Creek*	Mouth to South Fork Solider	0.0-5.3	Marshall
Sugar Creek*	Kentucky Lake Backwaters to Buzzard Roost Road	2.1-3.3	Calloway
Sugar Creek*	Mouth to Unnamed Reservoir	0.0-4.0	Graves
Trace Creek*	Mouth to Neeley Branch	0.0-3.0	Graves
West Fork Clarks River*	Soldier Creek to Duncan Creek	19.7-22.7	Graves
Wildcat Creek*	Ralph Wright Road Crossing to Headwaters	3.5-6.7	Calloway
TRADEWATER RIVER BASIN			
East Fork Flynn Fork*	Landuse Change to Headwaters	2.5-4.6	Caldwell
Piney Creek*	Lake Beshear Backwaters to Headwaters	4.5-10.2	Caldwell
Piney Creek Unidentified Tributary*	Mouth to Headwaters	0.0-2.9	Caldwell
Sandlick Creek*	Camp Creek to Headwaters	4.9-9.0	Christian
Sandlick Creek Unidentified Tributary*	Mouth to Headwaters	0.0-1.4	Christian
Tradewater River*	Dripping Springs Branch to Buntin Lake Dam	123.2-131.1	Christian
OHIO RIVER BASIN (Main Stem and Minor Tributaries)			
Big Sugar Creek Unidentified Tributary*	I-71 to Headwaters	1.0-3.6	Gallatin
Corn Creek Unidentified Tributary*	Mouth to Headwaters	0.0-2.0	Trimble
Crooked Creek*	Rush Creek to City Lake Dam	17.5-25.6	Crittenden
Double Lick Creek*	Mouth to Landuse Change	0.0-1.4	Boone
Garrison Creek*	Mouth to Headwaters	0.0-4.1	Boone
Kinniconick Creek*	McDowell Creek to Headwaters	5.1-50.4	Lewis
Massac Creek Unidentified Tributary*	Mouth to Headwaters	0.0-1.7	McCracken
Middle Fork Massac Creek*	Hines Road to Headwaters	3.15-6.2	McCracken
West Fork Massac Creek*	SR 725 to Little Massac Creek	3.2-5.4	McCracken
Second Creek*	Private Road Crossing to Headwaters	0.5-2.9	Boone
Yellowbank Creek*	Ohio River Backwaters to Headwaters	1.4-11.4	Breckinridge
LAKES AND RESERVOIRS			

Metropolis	Entire Lake		McCracken
Swan	Entire Lake		Ballard
MISSISSIPPI RIVER BASIN (Main Stem and Minor Tributaries)			
Jackson Creek*	Mouth to Headwaters	0.0-2.6	Graves
Obion Creek*	Hurricane Creek to Little Creek	25.2-35.5	Hickman
Terrapin Creek*	Tennessee Stateline to Headwaters	2.8-7	Graves
Murphy's Pond	Entire Pond and Preserve Area		Hickman
UPPER CUMBERLAND RIVER BASIN			
Bad Branch*	Mouth to Headwaters	0.0-3.0	Letcher
Bark Camp Creek*	Mouth to Martins Fork	0.0-3.95	Whitley
Beaver Creek*	Mouth to Freeman Fork and Middle Fork	0.0-6.5	McCreary
Bee Lick Creek	Mouth to Unidentified Tributary	0.0-5.7	Pulaski
Brownies Creek*	Blacksnake Branch to Headwaters	9.0-16.0	Bell
Bruch Creek	Wolf Creek to Reemergence of Sinking Creek	1.1-7.6	Rockcastle
Bruchy Creek*	Mouth to Headwaters	0.0-16.0	Pulaski
Buck Creek*	Lake Cumberland Backwaters to Headwaters	5.0-62.6	Pulaski
Bunches Creek*	Mouth to Headwater	0.0-3.3	Whitley
Cane Creek*	Mouth to Headwaters	0.0-12.0	Laurel
Clifty Creek	Mouth to Rocky Branch	0.0-2.7	Pulaski
Cogur Fork*	Mouth to Headwaters	0.0-7.9	McCreary
Cumberland River	Wild River Boundaries	558.5-574.6	McCreary/ Whitley
Dog Slaughter Creek*	Mouth to North Fork and South Fork	0.0-1.1	Whitley
Eagle Creek*	Mouth to Headwaters	0.0-6.3	McCreary
Fugitt Creek*	Landuse Change to Headwaters	0.5-4.9	Harlan
Horse Lick Creek*	Mouth to Clover Bottom	0.0-12.3	Jackson
Howards Creek*	Dale Hollow lake Backwaters to Headwaters	0.8-3.4	Clinton
Indian Creek*	Laurel fork to Barren Fork	2.3-6.7	McCreary
Jackie Branch*	Mouth to Headwaters	0.0-1.7	Whitley
Kilburn Fork	Mouth to Headwaters	0.0-6.3	McCreary
Laurel Creek	Mouth to Laurel Creek Dam	0.0-9.2	McCreary
Laurel Fork*	Tennessee Stateline to Tiny Branch/Pine Creek	4.2-13.0	Whitley
Laurel Fork*	Mouth to Headwaters	0.0-12.2	Jackson
Little South Fork of Cumberland River*	Mouth to Langham Branch	0.0-35.6	Wayne
Marsh Creek*	Laurel Creek to Headwaters	8.6-26.2	McCreary
Martins Fork of Cumberland River	Wild River Boundaries	27.4-31.3	Harlan
McFarland Creek	Little McFarland Creek to Spring Branch	0.8-6.2	Monroe
Mechack Creek	Mouth to Headwaters	0.0-2.8	Monroe
Middle Fork Rockcastle River*	Mouth to Horse Lick Creek	0.0-7.8	Jackson
Mud Camp Creek*	Mouth to Collins Branch	0.0-1.3	Cumberland
Mud Camp Creek*	Unidentified Tributary to Headwaters	3.7-8.4	Monroe/Cumberland
Otter Creek	Lake Cumberland Backwaters to Carpenter Fork	14.5-22.0	Wayne
Poor Fork Cumberland River*	Franks Creek to Headwaters	46.1-51.7	Letcher
Presley House Branch*	Mouth to Headwaters	0.0-1.5	Letcher
Puncheoncamp Branch*	Mouth to Headwaters	0.0-1.9	McCreary
Rock Creek*	White Oak Creek to Tennessee Stateline	4.1-21.9	McCreary
Rock Creek Unidentified Tributary*	Mouth to Headwaters	0.0-1.9	McCreary
Rock Creek Unidentified Tributary*	Mouth to Headwaters	0.0-1.15	McCreary
Rockcastle River	Wild River Boundaries	8.5-24.4	Laurel/ Pulaski
Shillalah Creek*	Mouth to Headwaters	0.0-5.5	Bell
Sinking Creek*	Mouth to White Oak Creek	0.0-9.8	Laurel
Sulphur Creek*	Dale Hollow Backwaters to Headwaters	2.0-5.1	Clinton

~~South Fork of Dog Slaughter Creek*~~	~~Mouth to Headwaters~~	~~0.0-4.6~~	~~Whitley~~
~~South Fork Rockcastle River~~	~~Mouth to White Oak Creek~~	~~0.0-5.6~~	~~Laurel~~
~~Watts Branch*~~	~~Mouth to Headwaters~~	~~0.0-2.6~~	~~McCreary~~
~~Watts Creek*~~	~~Lake to Headwaters~~	~~2.2-4.3~~	~~Harlan]~~

*Waterbodies in the cabinet's reference reach network

(a) Categorization criteria. A surface water shall be categorized as an exceptional water if any of the following criteria are met:

1. Surface water is designated as a Kentucky Wild River and is not categorized as an outstanding national resource water;

2. Surface water is designated as an outstanding state resource water as set forth in 401 KAR 10:031[~~401 KAR 5:031~~], Section 8(1)(a)1, 2, and 3 and Section 8(1)(b);

3. Surface water contains either of the following:

a. A fish community that is rated "excellent" by the use of the Index of Biotic Integrity included in "Development and Application of the Kentucky Index of Biotic Integrity (KIBI)", 2003[~~, incorporated by reference in Section 3 of this administrative regulation~~], or

b. A macroinvertebrate community that is rated "excellent" by the Macroinvertebrate Bioassessment Index included in "The Kentucky Macroinvertebrate Bioassessment Index," 2003[~~, incorporated by reference in Section 3 of this administrative regulation~~]; or

4. Surface water in the cabinet's reference reach network.

(b) Implementation procedure.

1. Dischargers listed in clauses a through e of this subparagraph shall be[~~are~~] subject to control by existing cabinet programs including the Kentucky Pollution Discharge Elimination System program, 401 KAR 5:050-5:080. Subparagraphs 2 through 9 of this paragraph shall not apply to those dischargers identified in clauses a through e of this paragraph, except the cabinet shall assure water quality necessary to fully protect existing uses.

a. [~~:~~]KPDES general permits for[~~:~~] storm water discharge;

b. Coal mining discharge subject to regulation under the Surface Mining Control and Reclamation Act 30 U.S.C. 1201-1328 and 33 U.S.C. 1344;

c. Domestic sewage discharge from a single-family residence;

d. Concentrated animal feeding operations; and

e. KPDES permit renewals and modifications that result in less than a twenty (20) percent increase in pollutant loading from the previously permitted pollutant loading

2. Zones of initial dilution shall be[~~are~~] prohibited in exceptional water unless assigned before December 12, 1999[~~the effective date of this administrative regulation~~].

3. Except as provided in subparagraph 7 of this paragraph, a KPDES permit for a new discharger or expanded discharge into exceptional water shall contain effluent limitations for the entire effluent and shall have an effluent quality of:

a. A chronic whole effluent toxicity limitation shall apply unless an acute whole effluent toxicity limitation is more stringent; and

b. Chloride limitations shall be based on the domestic water supply criterion of 250 mg/l.

4. Except as provided in subparagraph 7 of this paragraph, a KPDES permit for a new domestic sewage discharger or expanded domestic sewage discharge permitted after July 12, 1995 into exceptional water shall contain effluent limitations for the entire effluent and shall have an effluent quality of.

a. Not[~~No~~] greater than ten (10) mg/l five (5) day carbonaceous biochemical oxygen demand,

b. Not[~~No~~] greater than two (2) mg/l ammonia-nitrogen;

c. Not[~~No~~] greater than 0.010 mg/l total residual chlorine;

d. Not[~~No~~] greater than ten (10) mg/l total suspended solids;

e. Not[~~No~~] greater than one (1) mg/l total phosphorous;

f. A minimum of seven (7) mg/l dissolved oxygen;

g. The geometric mean[~~An arithmetic mean value~~] for fecal coliform bacteria shall not [~~to~~] exceed 200 colonies per 100 milliliters during a period of thirty (30) consecutive days or 400 colonies per 100 milliliters during a period of seven (7) consecutive days, or the geometric[~~an arithmetic~~] mean for Escherichia coli bacteria shall not [~~to~~] exceed 130 colonies per 100 milliliters during a period of thirty (30) consecutive days or 230 colonies per 100 milliliters during a period of seven (7) consecutive days; and

h. The discharge shall not cause the average instream dissolved oxygen concentration to be less than six and zero-tenths (6.0) mg/l.

5. Except as provided in subparagraph (7) of this paragraph, a KPDES permit for a new nondomestic discharger or an expanded nondomestic discharge permitted after July 12, 1995 into exceptional water shall be restricted to not[~~no~~] more than one-half (1/2) of the water quality based limitations that would have been permitted at standard design conditions.

6. If the permit applicant accepts the effluent limitations required by subparagraphs 3, 4, and 5 of this paragraph, the KPDES permit shall be issued with these effluent limitations and additional requirements of the Kentucky Pollution Discharge Elimination System program, 401 KAR 5:050-5:080, without further antidegradation review.

7. If the permit applicant does not accept the effluent limitations required by subparagraphs 3, 4, and 5 of this paragraph, the applicant shall demonstrate [~~to the satisfaction of the cabinet~~] that [~~no~~] technologically or economically feasible alternatives do not exist and that allowing lower water quality is necessary to accommodate important economic or social development in the area in which the water is located.

a. For purposes of this administrative regulation, the approval of a POTWs regional facility plan pursuant to 401 KRS 5:006 shall demonstrate compliance with the alternatives analysis and socioeconomic demonstration for a regional facility.

b. The alternatives analysis and socioeconomic demonstration shall follow the guidelines in [~~":"~~]Interim Economic Guidance for Water Quality Standards Workbook[~~":"~~], EPA, March 1995 [~~incorporated by reference in Section 3 of this administrative regulation~~].

c. The alternatives analysis shall consider the following:

(i)[~~a.~~] Discharge to other treatment facilities;

(ii)[~~b.~~] Use of other discharge locations;

(iii)[~~c.~~] Water reuse or recycle;

(iv)[~~d.~~] Process and treatment alternatives;

(v)[~~e.~~] On-site or subsurface disposal; and

(vi)[~~f.~~] Any other examination of alternatives to lowering water quality to which the cabinet and the applicant can agree.

8. A permit applicant who has failed to demonstrate [~~to the satisfaction of the cabinet~~] the necessity for lowering water quality shall meet the effluent limitations required by this paragraph and additional requirements of the Kentucky Pollution Discharge Elimination System program, 401 KAR 5:050-5:080.

9. A permit applicant who demonstrates [~~to the satisfaction of the cabinet~~] the necessity for lowering water quality shall meet the water quality based limitations as outlined in 401 KAR 10:031[~~401 KAR 5:031~~].

(3) High quality water.

(a) Categorization criteria.

1. A surface water shall be categorized as high quality water if the surface water is not listed as an outstanding national resource water or an exceptional water in Table 1 or 2 of this section and if the surface water does not meet the criteria for impaired water as provided for in subsection 4(a) of this section.

2. A surface water shall be categorized as a high quality water if the surface water is listed as an outstanding state resource water in 401 KAR 10:026[~~401 KAR 5:026~~] and is not listed as an outstanding national resource water or an exceptional water in Table 1 or 2 of this section.

(b) Implementation procedure. KPDES permit applications for discharges into high quality water received after U.S. EPA approval of this subsection shall comply with this paragraph.

1. Dischargers listed in clauses a through e of this subparagraph shall be[~~are~~] subject to control by existing cabinet programs including the Kentucky Pollution Discharge Elimination System program, 401 KAR 5:050-5:080 Subparagraphs 2 through 6 of this paragraph shall not apply to those dischargers identified in clauses

a through e of this paragraph, except the cabinet shall assure water quality necessary to fully protect existing uses

a. KPDES general permits for storm water discharge;

b. Coal mining discharge subject to regulation under the Surface Mining Control and Reclamation Act, 30 U.S.C. 1201-1328[et seq.], and 33 U.S.C. 1344;

c. Domestic sewage discharge from a single-family residence;

d. Concentrated animal feeding operations; and

e. KPDES permit renewals and modifications that result in less than a twenty (20) percent increase in pollutant loading from the previously permitted pollutant loading.

2. Except as provided in subparagraph 5 of this paragraph, a KPDES permit for a new domestic sewage discharger or expanded domestic sewage discharge into high quality water shall contain effluent limitations for the entire effluent and shall have an effluent quality of:

a. Not[No] greater than ten (10) mg/l five (5) day carbonaceous biochemical oxygen demand;

b. Not[No] greater than two (2) mg/l ammonia-nitrogen;

c. Not[No] greater than 0.010 mg/l total residual chlorine;

d. Not[No] greater than ten(10) mg/l total suspended solids;

e. Not[No] greater than one (1) mg/l total phosphorous;

f. A minimum of seven (7) mg/l dissolved oxygen; and

g. The geometric mean[An arithmetic mean value] for fecal coliform bacteria shall not [to] exceed 200 colonies per 100 milliliters during a period of thirty (30) consecutive days or 400 colonies per 100 milliliters during a period of seven (7) consecutive days, or the geometric[an arithmetic] mean for Escherichia coli bacteria shall not [to] exceed 130 colonies per 100 milliliters during a period of thirty (30) consecutive days or 230 colonies per 100 milliliters during a period of seven (7) consecutive days.

3. Except as provided in subparagraph 5 of this paragraph, a KPDES permit for a new nondomestic discharger or an expanded nondomestic discharge into high quality water shall be restricted to not[no] more than one-half (1/2) of the water quality based limitations that would have been permitted at standard design conditions.

4. If the permit applicant accepts the effluent limitations required by subparagraphs 2 and 3 of this paragraph, the KPDES permit shall be issued with these effluent limitations and any additional requirements of the Kentucky Pollution Discharge Elimination System program, 401 KAR 5 050-5 080, without further antidegradation review.

5. If the permit applicant does not accept the effluent limitations required by subparagraphs 2 and 3 of this paragraph, the applicant may request water quality based limitations permitted at standard design conditions

a. In making this request, the applicant shall demonstrate [to the satisfaction of the cabinet] that [no] technologically or economically feasible alternatives do not exist and that allowing lower water quality is necessary to accommodate important economic or social development in the area in which the water is located.

b. [For purposes of this administrative regulation,] The approval of a POTW's regional facility plan pursuant to 401 KAR 5:006 shall demonstrate compliance with the alternatives analysis and socioeconomic demonstration for a regional facility.

c. The alternatives analysis and socioeconomic demonstration shall consider the following:

(i)[a.] Discharge to other treatment facilities;

(ii)[b.] Use of other discharge locations;

(iii)[c.] Water reuse or recycle;

(iv)[d.] Process and treatment alternatives;

(v)[e.] On-site or sub-surface disposal;

(vi)[f.] Any other examination of alternatives to lowering water quality to which the cabinet and the applicant can agree;

(vii)[g.] The positive or beneficial effect of the facility on an existing environmental or public health problem;

(viii)[h.] The increase or avoidance of a decrease in employment;

(ix)[i.] The increase in production level;

(x)[j.] The increase in operational efficiency;

(xi)[k.] Industrial or commercial benefit to the community; and

(xii)[l.] Any other economic or social benefit to the community.

6. A permit applicant who has failed to demonstrate [to the satisfaction of the cabinet] the necessity for lowering water quality shall meet the effluent limitations required by this paragraph and additional requirements of the Kentucky Pollution Discharge Elimination System program, 401 KAR 5:050-5:080.

7. A permit applicant who demonstrates [to the satisfaction of the cabinet] the necessity for lowering water quality shall meet the water quality based limitations as outlined in 401 KAR 10:031[401 KAR 5:031].

(4) Impaired water.

(a) Categorization criteria. A surface water categorized as impaired for applicable designated uses shall be a water identified pursuant to 33 U.S.C. 1315 or designated pursuant to 401 KAR 10 026, Section 1, with a use of Modified Warm Water Aquatic Habitat

1. Surface water categorized as impaired shall be assessed by the cabinet as not fully supporting any applicable designated uses.

2. A surface water shall not be categorized as impaired water if the surface water is listed as an outstanding state resource water in 401 KAR 10 026[401 KAR 5:026].

(b) Implementation procedure.

1. All existing uses shall be protected and the level of water quality necessary to protect those existing uses shall be assured in impaired water.

2. The process to allow a discharge into an impaired water and to assure protection of the water shall be[is] regulated by the requirements in the Kentucky Pollution Discharge Elimination System Program, 401 KAR 5 050-5 080.

Section 2. Procedure for Recategorizing Water. This section shall apply to the recategorization of surface water to outstanding national resource water and exceptional water. The redesignation of water to outstanding state resource water shall be governed by the procedures in 401 KAR 10 026[401 KAR 5:026].

(1) The cabinet may propose to recategorize certain water to outstanding national resource water and exceptional water if the water meets the criteria set forth in Section 1(1)(a) or (2)(a) of this administrative regulation

(a) If the cabinet proposes to recategorize these waters, it shall provide notice and an opportunity for public hearing

(b) The cabinet shall provide the documentation requirements of this section for those surface waters it proposes to recategorize.

(2) A person may request recategorization of a surface water to an outstanding national resource water or exceptional water by filing a petition with the cabinet.

(a) The petition shall include the name and address of the petitioner and the information and documentation necessary to recategorize the particular water as required by subsection (4) of this section;

(b) The petitioner shall have the burden of proof that the recategorization is appropriate.

(c) The cabinet shall provide notice of the petition and an opportunity for a public hearing.

(d) The cabinet shall review the petition, supporting documentation, and any comments received from the public to determine if the proposed water qualifies for recategorization.

(e) The cabinet shall document the determination to grant or deny recategorization as a result of a petition, and shall provide a copy of the decision to the petitioner and other interested parties.

(3) If a water is to be recategorized, the cabinet shall publish notice of the recategorization.

(a) A[Any] permit issued after the date of publication shall be issued with limitations based on the new category.

(b) When the cabinet reviews its water quality standards pursuant to the provisions of Section 303 of the Clean Water Act, the cabinet shall propose to have all recategorized water promulgated as an amendment to this administrative regulation.

(4) The following information, documentation, and data shall support a petition for recategorization:

(a) A petition for outstanding national resource water shall include:

1. A United States Geological Survey 7.5 minute topographic map or its equivalent [as approved by the cabinet] showing those surface waters to be recategorized including a description consisting of a river mile index with any existing and proposed discharge

points;

2. Existing uses and water quality data for the surface water for which the recategorization is proposed. If adequate data are unavailable, additional studies shall[may] be required by the cabinet;

3. Descriptions of general land uses and specific land uses adjacent to the surface water for which the recategorization is proposed;

4. The existing and designated uses of the water upstream and downstream of the proposed recategorized water;

5. General physical characteristics of the surface water including width, depth, bottom composition, and slope;

6. The frequency of occasions when there is no natural flow in the surface water[,] and the $7Q_{10}$ and harmonic mean flow values for the surface water and adjacent surface waters;

7. An assessment of the existing and potential aquatic life habitat in the surface water under consideration and the adjacent upstream surface waters. The existing aquatic life shall be documented including the occurrence of individuals or populations, indices of diversity and well-being, and abundance of species of any unique native biota;

8. A documented rationale as to why the water qualify for the recategorization; and

9. The rationale used to support the national significance of the water.

(b) A petition for exceptional water shall include the following:

1. A United States Geological Survey 7.5 minute topographic map or its equivalent [as approved by the cabinet] showing the surface water to be recategorized including a description consisting of a river mile index with existing and proposed discharge points;

2. Descriptions of general land uses, including:

a. Mining;

b. Agriculture;

c. Recreation;

d. Low, medium, and high density residential, commercial, or industrial uses; and

e. [mining, agricultural, recreational, low, medium, and high density residential, commercial, and industrial, and] Specific land uses adjacent to the surface water for which the recategorization is proposed;

3. The frequency of occasions when there is no natural flow in the surface water[,] and the $7Q_{10}$ and annual mean flow values for the surface water; and

4. Fish or benthic macroinvertebrate collection data and an Index of Biotic Integrity or Macroinvertebrate Bioassessment Index calculation from a waterbody if criteria specified in Section 1(2)(a)3 of this administrative regulation are utilized.

Section 3. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Development and Application of the Kentucky Index of Biotic Integrity (KIBI)", 2003, Kentucky Division of Water, Environmental and Public Protection Cabinet;

(b) "The Kentucky Macroinvertebrate Bioassessment Index", 2003, Kentucky Division of Water, Environmental and Public Protection Cabinet;

(c) "Interim Economic Guidance for Water Quality Standards Workbook", EPA, March 1995 Publication EPA-823-B-95-002, U.S. Environmental Protection Agency, Office of Water, Washington, D.C.; and

(d) "401 KAR 5:030 Antidegradation Implementation Procedures Process Flow Chart", May 25, 2004, KPDES Branch, Kentucky Division of Water, Kentucky Department for Environmental Protection.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Water, 14 Reilly Road, Frankfort, Kentucky, Monday through Friday, 8 a.m. to 4:30 p.m.

ROBERT D. VANCE, Secretary

APPROVED BY AGENCY: June 5, 2008

FILED WITH LRC: June 21, 2008 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 23, 2008 at 6:30 PM. (Eastern Time) at the Capitol Annex, Room 149, 702 Capitol Avenue, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by July 16, 2008, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. If you request a transcript, you may be required to pay for it. 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, 2008. 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: Abigail Powell, Regulations Coordinator, Division of Water, 14 Reilly Road, Frankfort, Kentucky 40601, phone (502) 564-3410, fax (502) 564-011, email Abigail Powell@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Sandy Gruzesky, Director

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation implements the antidegradation policy of 401 KAR 10:029 by establishing procedures to control water pollution in waters affected by that policy. This administrative regulation provides categorization criteria, lists many surface waters assigned to specific categories, and provides for recategorization of water.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to manage water resources and to provide for the prevention, abatement, and control of water pollution.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to KRS 224.10-100 which requires the Environmental and Public Protection Cabinet to develop and conduct a comprehensive program for the management of water resources and to provide for the prevention, abatement, and control of water pollution. KRS 224.70-100 declares that the policy of the Commonwealth is to conserve its waters for legitimate uses and to: safeguard from pollution the uncontaminated waters of the Commonwealth, prevent the creation of any new pollution in the waters of the Commonwealth, and abate any existing pollution. This administrative regulation and 401 KAR 10.001, 10.026, 10.029, and 10 031 establish procedures to protect the surface waters of the Commonwealth, and thus manage water resources and prevent water pollution. This administrative regulation establishes a methodology to implement the antidegradation policy contained in 401 KAR 10.029 by establishing procedures to control point source water pollution in waters affected by that policy

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the administration of the statutes by implementing the antidegradation policy for the protection of surface waters of the Commonwealth as required by the authorizing statutes.

(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 includes another 37 stream segments totaling 118 miles of surface waters newly categorized as exceptional water as a result of routine watershed monitoring and investigations of potential waters affected by permitted activities since the previous revisions to the regulations in 2004.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to add waters that have been found to meet the criteria for Exceptional water since the previous revisions and to add a criterion for the Impaired Water category.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to KRS 224.10-100 which requires the Environmental and Public Protection Cabinet to develop and conduct a comprehensive program for the manage-

ment of water resources and to provide for the prevention, abatement, and control of water pollution. KRS 224.70-100 declares that the policy of the Commonwealth is to conserve its waters for legitimate uses and to: safeguard from pollution the uncontaminated waters of the Commonwealth, prevent the creation of any new pollution in the waters of the Commonwealth, and abate any existing pollution. This amendment establishes procedures to protect the surface waters of the Commonwealth, and thus protect water resources. This amendment establishes a methodology to implement the antidegradation policy contained in 401 KAR10:029 by establishing procedures to control point source water pollution in waters affected by that policy.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will assist in the administration of the statutes by listing surface waters newly categorized as exceptional water and adding a qualifying criterion for waters in the Impaired Water category.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation includes 37 surface waters newly categorized as exceptional waters. Individuals, businesses, organizations, and governments that will have new or expanded wastewater discharges into streams categorized as exceptional water or high quality water could be affected by either stricter discharge limitations or an alternatives analysis and socioeconomic demonstration.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The permit limitations imposed on new or expanded point source dischargers into water bodies could result in additional treatment outlays, training costs, and operational changes. New or expanded point source dischargers covered under the Section 402 KPDES permit system may incur costs of alternatives and pollution prevention and socioeconomic analyses. This requirement already exists in state and federal law. This amended administrative regulation sets forth specific implementation procedures to comply with existing antidegradation requirements.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The costs to comply with this administrative regulation will vary considerably depending on the site location, the type of activity occurring, and other factors. Therefore, it is not possible to determine quantitative costs to implement this regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Direct and indirect savings will be realized through reduced drinking water treatment costs, maintenance of good agricultural water, maintenance of fisheries, and healthy recreational waters.

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

(a) Initially: Given current budgetary limitations, additional workload will be absorbed within existing levels of funding and staffing.

(b) On a continuing basis: The cabinet, in implementing the requirements of this amended administrative regulation, will internalize most associated costs with normal budget appropriations Socioeconomic demonstrations will be reviewed and determinations made as to their adequacy. Costs may increase if the division's findings are contested.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation? The source of revenue will be the General Fund and federal funds, as appropriated by the Kentucky General Assembly.

(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: Fees or funding increases are not anticipated to be necessary to the implementation of this amendment.

(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 fees nor directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Yes, tiering is used in this administrative regulation. The cabinet concluded that exceptional and high quality water receiving stormwater discharges covered by the KPDES general permits are protected under existing cabinet programs and do not require additional antidegradation review. Storm water discharges are considered to be short-term impacts and the vast majority do not receive numerical permit limits; however, they must comply with the best management practices and are inspected by the cabinet to ensure compliance. Coal mining discharge is not subject to additional antidegradation review in exceptional and high quality water. The cabinet's Section 402 KPDES permit process addresses the quality of discharges from permitted sediment ponds, not the methods of coal mining that are used or the location of the pond itself. Discharge limits are technology-based and are set by U.S. EPA and the cabinet for the coal mining industry. Fills in waters of the U.S. that are designated as outstanding state resource waters and cold water aquatic habitats will receive additional review by the cabinet under the Section 401 Water Quality Certification process. This review complements the Corps' 404 evaluation and is intended to insure that these waters and their aquatic resources are protected. Unavoidable impacts require compensatory mitigation to replace the lost aquatic stream functions using the Corps' Eastern Kentucky Stream Functional Assessment Protocol. No fills are permitted in streams designated as outstanding state resource water (OSRW). Coal mining is also subject to regulation under the Surface Mining Control and Reclamation Act. Domestic sewage discharge from a single-family residence is also not subject to additional antidegradation review in exceptional and high quality water if the cabinet deems that no feasible alternatives exist. The cabinet considers alternatives analysis for domestic sewage dischargers. Concentrated Animal Feeding Operations must already comply with a no discharge to waters of the Commonwealth permit; therefore, the cabinet concluded that Concentrated Animal Feeding Operations located next to excellent and high quality water are protected under existing cabinet programs and need not be subjected to additional antidegradation analysis. Operations that expand by less than twenty percent over currently permitted pollutant loadings are not subject to further antidegradation analysis. This is consistent with the existing requirements of this administrative regulation. The cabinet shall assure water quality necessary to fully protect existing uses. The cabinet concluded that a POTW's approval of a regional facility plan pursuant to 401 KAR 5:006 (201 Planning Document) will demonstrate compliance with the alternatives analysis and socioeconomic demonstration.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This amended administrative regulation may affect the wastewater treatment divisions of local government if they will have new or expanded discharges into outstanding national resource waters, exceptional waters, or high quality waters.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. This amended administrative regulation relates to local governments' wastewater treatment service. KRS 224.10-100, 224.70-100, and 224.70-110 mandate action taken by this administrative regulation.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This regula-

tion will not generate any revenue.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This regulation will not generate any revenue.

(c) How much will it cost to administer this program for the first year? There will be no cost to state or local agencies to implement this regulation.

(d) How much will it cost to administer this program for subsequent years? There will be no cost to state or local agencies to implement this regulation.

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

Revenues (+/-): Cannot be determined

Expenditures (+/-): Cannot be determined

Other Explanation: Wastewater treatment costs may increase for those local governments that will have new or expanded discharges into exceptional waters and high quality waters. Local governments withdrawing drinking water from these waters may have lower treatment costs, because these waters should have lower pollutant loads. The permit limitations imposed on new or expanded point source dischargers into water bodies could result in additional treatment outlays, training costs, and operational changes. New or expanded dischargers may incur costs of alternatives and pollution prevention analyses. Direct and indirect savings will be realized through reduced drinking water treatment costs, maintenance of good agricultural water, maintenance of fisheries, and healthy recreational waters. This requirement already exists in state and federal law. The amended administrative regulation does not create additional obligations for dischargers. This amended administrative regulation sets forth specific implementation procedures to comply with already existing antidegradation requirements. This administrative regulation allows regional publicly-owned treatment works to use their Regional Facility Plan (201 Planning Document) as an exception to compliance with the socioeconomic demonstration and alternatives analysis.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. There is no federal statute or regulation mandating that Kentucky implement a water pollution control program. For Kentucky to maintain its delegation over the NPDES permit program, the Clean Water Act requires that Kentucky review its water quality standards every three years and comply with the programmatic requirements of 40 C.F.R. Part 131, including the requirement for implementing an antidegradation policy. The federal regulations require the adoption of an antidegradation policy for delegated states. The U.S. Environmental Protection Agency does provide guidance to the states, but individual decisions concerning the states water quality programs are left to the states.

2. State compliance standards. 401 KAR 10:001, 10:026, 10.029, 10.030, and 10 031, the water quality standards regulations.

3. Minimum or uniform standards contained in the federal mandate. The Clean Water Act requires designated uses, criteria, standards and antidegradation policies in water quality standards.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements than those required by the federal mandate? No

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. There are no stricter standards or additional or different responsibilities or requirements.

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

401 KAR 10:031. Surface water standards.

RELATES TO: KRS 146.200-146.360, 146.410-146.535, 146.550-146.570, 146.600-146.619, 146.990, 224.01-010, 224.01-400, 224.16-050, 224.16-070, 224.70-100-224.70-140, 224.71-100-224.71-145, 224.73-100-224.73-120

STATUTORY AUTHORITY: KRS 146.220, 146.241, 146.270, 146.410, 146.450, 146.460, 146.465, 224.10-100, 224.16-050, 224.16-060, 224.70-100, 224.70-110, 40 C.F.R. Part 131, 16 U.S.C. 1271-1287[et seq.], 1531-1544[et seq.], 33 U.S.C. 1311, 1313, 1314, 1341

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100 requires the Environmental and Public Protection Cabinet to develop and conduct a comprehensive program for the management of water resources and to provide for the prevention, abatement, and control of water pollution. This administrative regulation and 401 KAR 10:001, 10:026, 10:029, and 10:030[5:002, 5:026, 5:029, and 5:030] establish procedures to protect the surface waters of the commonwealth, and thus protect water resources. This administrative regulation establishes water quality standards that[which] consist of designated legitimate uses of the surface waters of the commonwealth and the associated water quality criteria necessary to protect those uses. These water quality standards are minimum requirements that apply to all surface waters in the commonwealth of Kentucky in order to maintain and protect them for designated uses. These water quality standards are subject to periodic review and revision in accordance with the Clean Water Act, 33 U.S.C. 1251-1387, 40 C.F.R. Part 131, and KRS Chapter 224 [federal and state laws].

Section 1. Nutrient Limits. In lakes and reservoirs and their tributaries, and other surface waters where eutrophication problems may exist, nitrogen, phosphorus, carbon, and contributing trace element discharges shall be limited in accordance with:

(1) The scope of the problem;

(2) The geography of the affected area; and

(3) Relative contributions from existing and proposed sources.

Section 2. Minimum Criteria Applicable to All Surface Waters. (1) The following minimum water quality criteria shall be[are] applicable to all surface waters including mixing zones, with the exception that toxicity to aquatic life in mixing zones shall be subject to the provisions of 401 KAR 10:029[5:029], Section 4. Surface waters shall not be aesthetically or otherwise degraded by substances that:

(a) Settle to form objectionable deposits;

(b) Float as debris, scum, oil, or other matter to form a nuisance;

(c) Produce objectionable color, odor, taste, or turbidity;

(d) Injure, are chronically or acutely toxic to or produce adverse physiological or behavioral responses in humans, animals, fish and other aquatic life;

(e) Produce undesirable aquatic life or result in the dominance of nuisance species;

(f) Cause fish flesh tainting. [~~The concentration of all phenolic compounds which cause fish flesh tainting shall not exceed five (5) µg/l as an instream value;~~

~~(g) Cause the following changes in radionuclides:~~

~~1. The gross total alpha particle activity, including radium-226 but excluding radon and uranium, to exceed fifteen (15) pCi/l;~~

~~2. Combined radium-226 and radium-228 to exceed five (5) pCi/l. Specific determinations of radium-226 and radium-228 are not necessary if dissolved gross alpha particle activity does not exceed five (5) pCi/l;~~

~~3. The concentration of total gross beta particle activity to exceed fifty (50) pCi/l;~~

~~4. The concentration of tritium to exceed 20,000 pCi/l;~~

~~5. The concentration of total Strontium-90 to exceed eight (8) pCi/l;~~

~~6. The concentration of uranium to exceed thirty (30) µg/l.~~]

(2) The water quality criteria for the protection of human health related to fish consumption in Table 1 of Section 6 of this administrative regulation are applicable to all surface water at the edge of the assigned mixing zones except for those points where water is withdrawn for domestic water supply use.

(a) The criteria are established to protect human health from the consumption of fish tissue, and shall not be exceeded.

(b) For those substances associated with a cancer risk, an acceptable risk level of not[ne] more than one (1) additional cancer case in a population of 1,000,000 people, or 1 x 10^{-6} shall be utilized to establish the allowable concentration.

Section 3. Use Designations and Associated Criteria. (1) Surface waters may be designated as having one (1) or more legitimate uses and associated criteria protective of those uses. Those uses are listed in 401 KAR 10:026[5:026]. Nothing in this administrative regulation shall be construed to prohibit or impair the legitimate beneficial uses of these waters. The criteria in Sections 2, 4, 6, and 7 of this administrative regulation represent minimum conditions necessary to:

(a) Protect surface waters for the indicated use; and

(b) Protect human health from fish consumption.

(2) On occasion, surface water quality may be outside of the limits established to protect designated uses because of natural conditions. If this occurs during periods when stream flows are below the flow that is used by the cabinet to establish effluent limitations for wastewater treatment facilities, a discharger shall not be considered a contributor to instream violations of water quality standards, if treatment results in compliance with permit requirements

(3) Stream flows for water quality-based permits. The following stream flows shall be utilized if deriving KPDES permit limitations to protect surface waters for the listed uses and purposes:

(a) Aquatic life protection shall be $7Q_{10}$;

(b) Water-based recreation protection shall be $7Q_{10}$;

(c) Domestic water supply protection shall be determined at points of withdrawal as:

1. The harmonic mean for cancer-linked substances; and

2. $7Q_{10}$ for noncancer-linked substances;

(d) Human health protection from fish consumption and for changes in radionuclides shall be the harmonic mean; and

(e) Protection of aesthetics shall be $7Q_{10}$.

Section 4. Aquatic Life. (1) Warm water aquatic habitat. The following parameters and associated criteria shall apply for the protection of productive warm water aquatic communities, fowl, animal wildlife, arboreous growth, agricultural, and industrial uses:

(a) Natural alkalinity as $CaCO_3$ shall not be reduced by more than twenty-five (25) percent.

1. If natural alkalinity is below twenty (20) mg/l $CaCO_3$, there shall not be a reduction below the natural level.

2. Alkalinity shall not be reduced or increased to a degree that[which] may adversely affect the aquatic community.[;]

(b) pH shall not be less than six and zero-tenths (6.0) nor more than nine and zero-tenths (9.0) and shall not fluctuate more than one and zero-tenths (1.0) pH unit over a period of twenty-four (24) hours.[;]

(c) Flow shall not be altered to a degree that[which] will adversely affect the aquatic community;[;]

(d) Temperature shall not exceed thirty-one and seven-tenths (31.7) degrees Celsius (eighty-nine (89) degrees Fahrenheit).

1. The normal daily and seasonal temperature fluctuations that existed before the addition of heat due to other than natural causes shall be maintained.

2. The cabinet may determine allowable surface water temperatures on a site-specific basis utilizing available data that[which] shall be based on the effects of temperature on the aquatic biota which utilize specific surface waters of the commonwealth and that[which] may be affected by person-induced temperature changes.

a. Effects on downstream uses shall[will] also be considered in determining site-specific temperatures.

b. Values in the following table are guidelines for surface water temperature

Month/Date	Period Average		Instantaneous Maximum	
	(°F)	(°C)	(°F)	(°C)
January 1-31	45	7	50	10
February 1-29	45	7	50	10
March 1-15	51	11	56	13
March 16-31	54	12	59	15
April 1-15	58	14	64	18
April 16-30	64	18	69	21
May 1-15	68	20	73	23
May 16-31	75	24	80	27
June 1-15	80	27	85	29
June 16-30	83	28	87	31
July 1-31	84	29	89	32
August 1-31	84	29	89	32
September 1-15	84	29	87	31
September 16-30	82	28	86	30
October 1-15	77	25	82	28
October 16-31	72	22	77	25
November 1-30	67	19	72	22
December 1-31	52	11	57	14

3. A successful demonstration concerning thermal discharge limits carried out under Section 316(a) of the Clean Water Act shall constitute compliance with the temperature requirements of this subsection. A successful demonstration assures the protection and propagation of a balanced indigenous population of shellfish, fish and wildlife in or on the water into which the discharge is made.[;]

(e) Dissolved oxygen.

1.a. Dissolved oxygen shall be maintained at a minimum concentration of five and zero-tenths (5.0) mg/l as a twenty-four (24) hour average in water with WAH use[daily average];

b. The instantaneous minimum shall not be less than four and zero-tenths (4.0) mg/l in water with WAH use and five and zero-tenths (5.0) mg/l in water with OSRW use

2. The dissolved oxygen concentration shall be measured at middepth in waters having a total depth of ten (10) feet or less and at representative depths in other waters.[;]

(f) Total dissolved solids or specific conductance. Total dissolved solids or specific conductance shall not be changed to the extent that the indigenous aquatic community is adversely affected;[;]

(g) Total suspended solids. Total suspended solids shall not be changed to the extent that the indigenous aquatic community is adversely affected;[;]

(h) Settleable solids. The addition of settleable solids that may alter the stream bottom so as to adversely affect productive aquatic communities is prohibited.[;]

(i) Ammonia. The concentration of the un-ionized form shall not be greater than 0.05 mg/l at any time instream after mixing. Unionized ammonia shall be determined from values for total ammonia-N, in mg/l, pH and temperature, by means of the following equation:

$$Y = 1\ 2\ (\text{Total ammonia-N})/(1 + 10^{pK_a - pH})$$

$$pk_a = 0.0902 + (2730/(273.2 + T_c))$$

Where:

T_c = temperature, degrees Celsius.

Y = un-ionized ammonia (mg/l);[;]

(j) Toxics.

1. The allowable instream concentration of toxic substances, or whole effluents containing toxic substances, which are noncumulative or nonpersistent with a half-life of less than ninety-six (96) hours, shall not exceed:

a. One-tenth (0.1) of the ninety-six (96) hour median lethal concentration (LC_{50}) of representative indigenous or indicator aquatic organisms; or

b. A chronic toxicity unit of 1.00 utilizing the twenty-five (25) percent inhibition concentration, or LC_{25}.

2. The allowable instream concentration of toxic substances, or whole effluents containing toxic substances, which are bioaccumulative or persistent, including pesticides, if not specified elsewhere in this section, shall not exceed:

a. 0.01 of the ninety-six (96) hour median lethal concentration (LC_{50}) of representative indigenous or indicator aquatic organisms; or

b. A chronic toxicity unit of 1.00 utilizing the IC_{25}.

3. In the absence of acute criteria for pollutants listed in Table

1 of Section 6 of this administrative regulation, [or] for other substances known to be toxic but not listed in this administrative regulation, or for whole effluents that[which] are acutely toxic, the allowable instream concentration shall not exceed the LC_1 or one-third (1/3) LC_{50} concentration derived from toxicity tests on representative indigenous or indicator aquatic organisms or exceed three-tenths (0 3) acute toxicity units.

4. If specific application factors have been determined for a toxic substance or whole effluent such as an acute to chronic ratio or water effect ratio, they may be used instead of the one-tenth (0.1) and 0.01 factors listed in this subsection upon demonstration by the applicant that the application factors are scientifically defensible[approval by the cabinet].

5. Allowable instream concentrations for specific pollutants for the protection of warm water aquatic habitat are listed in Table 1 of Section 6 of this administrative regulation. These concentrations are based on protecting aquatic life from acute and chronic toxicity and shall not be exceeded; and[-]

(k) Total residual chlorine. Instream concentrations for total residual chlorine shall not exceed an acute criteria value of nineteen (19) µg/l or a chronic criteria value of eleven (11) µg/l.

(2) Cold water aquatic habitat. The following parameters and criteria are for the protection of productive cold water aquatic communities and streams that support trout populations, whether self-sustaining or reproducing, on a year-round basis. The criteria adopted for the protection of warm water aquatic life also apply to the protection of cold water habitats with the following additions:

(a) Dissolved oxygen.

1. A minimum concentration of six and zero-tenths (6 0) mg/l as a twenty-four (24) hour[daily] average and five and zero-tenths (5.0) mg/l as an instantaneous minimum shall be maintained.

2. In lakes and reservoirs that support trout, the concentration of dissolved oxygen in waters below the epilimnion shall be kept consistent with natural water quality; and[-]

(b) Temperature. Water temperature shall not be increased through human activities above the natural seasonal temperatures.

(3) Modified warm water aquatic habitat. The criteria adopted for the protection of warm water aquatic habitat also shall apply to the protection of modified warm water aquatic habitat, except that for dissolved oxygen a minimum concentration of four and zero-tenths (4.0) mg/l as a twenty-four (24) hour average and three and zero-tenths (3.0) mg/l as an instantaneous minimum shall be maintained.

Section 5. Domestic Water Supply Use. Maximum allowable instream concentrations for specific substances, to be applicable at the point of withdrawal for use for domestic water supply from surface water sources are specified in Table 1 of Section 6 of this administrative regulation and shall not be exceeded.

Section 6. Pollutants. (1) Allowable instream concentrations of pollutants are listed in Table 1 of this section.

Table 1

Pollutant	CAS[1] Number	Water Quality Criteria µg/L[2]			
		Human Health:		Warm Water Aquatic Habitat[3]:	
		DWS[4]	Fish[5]	Acute[6]	Chronic[7]
Acenaphthene	83329	670	990	-	-
Acrolein	107028	190	290	-	-
Acrylonitrile	107131	0 051	0 25	-	-
Aldrin	309002	0 000049	0 000050	3 0	-
alpha-BHC	319846	0 0026	0 0049	-	-
alpha-Endosulfan	959988	62	89	0 22	0 056
Anthracene	120127	8,300	40,000	-	-
Antimony	7440360	5 6	640	-	-
Arsenic	7440382	10 0	-	340	150
Asbestos	1332214	7 million fibers/L	-	-	-
Barium	7440393	1,000	-	-	-
Benzene	71432	2 2	51	-	-
Benzidine	92875	0 000086	0 00020	-	-
Benzo(a)anthracene	56553	0 0038	0 018	-	-
Benzo(a)pyrene	50328	0 0038	0 018	-	-
Benzo(b)fluoranthene	205992	0 0038	0 018	-	-
Benzo(k)fluoranthene	207089	0 0038	0 018	-	-
Beryllium	7440417	4	-	-	-
Beta-BHC	319857	0 0091	0 017	-	-
Beta-Endosulfan	33213659	62	89	0 22	0 056
bis(chloromethyl)ether	542881	0 00010	0 00029	-	-
bis(2-chloroethyl)ether	111444	0 030	0 53	-	-
bis(2-chloroisopropyl)ether	108601	1,400	65,000	-	-
bis(2-ethylhexyl)phthalate	117817	1 2	2 2	-	-
Bromoform	75252	4 3	140	-	-
Butylbenzyl phthalate	85687	1,500	1,900	-	-
Cadmium	7440439	5	-	e(1.0166 (ln Hard*)-3 924)	e(0.7409 (ln Hard*)-4 719)
Carbon tetrachloride	56235	0 23	1 6	-	-
Chlordane	57749	0 00080	0 00081	2 4	0.0043
Chloride	16887006	250,000	-	860,000	230,000
Chlorobenzene	108907	130	1600	-	-
Chlorodibromomethane	124481	0 40	13	-	-
Chloroform	67663	5 7	470	-	-
Chloropyrifos	2921882	-	-	0 083	0 041
Chromium	N/A	100	-	-	-
Chromium (III)	16065831	-	-	e(0.8190 (ln Hard*)+3 7256)	e(0 8190 (ln Hard*)+0 6848)

Table 1

Pollutant	CAS[1] Number	Water Quality Criteria µg/L[2]			
		Human Health:		Warm Water Aquatic Habitat[3]:	
		DWS[4]	Fish[5]	Acute[6]	Chronic[7]
Chromium (VI)	18540299	-	-	16	11
Chrysene	218019	0 0038	0 018	-	-
Color	N/A	75 Platinum Cobalt Units	-	-	-
Copper	7440508	1,300	-	e(0.9422 (ln Hard*)-1 700)	e(0 8545 (ln Hard*)-1 702)
Cyanide, Free	57125	140	140	22	5 2
Demeton	8065483	-	-	-	0 1
Diazinon	333415			0 17	0 17
Dibenzo(a,h)anthracene	53703	0 0038	0 018	-	-
Dichlorobromomethane	75274	0 55	17	-	-
Dieldrin	60571	0 000052	0 000054	0 24	0 056
Diethyl phthalate	84662	17,000	44,000	-	-
Dimethyl phthalate	131113	270,000	1,100,000	-	-
Di-n-butyl phthalate	84742	2,000	4,500	-	-
Dinitrophenols	25550587	69	5300	-	-
Endosulfan sulfate	1031078	62	89	-	-
Endrin	72208	0 059	0 060	0 086	0 036
Endrin aldehyde	7421934	0 29	0 30	-	-
Ethylbenzene	100414	530	2100	-	-
Fluoranthene	206440	130	140	-	-
Fluorene	86737	1,100	5,300	-	-
Fluoride	N/A	4,000	-	-	-
gamma-BHC (Lindane)	58899	0 98	1 8	0 95	-
Guthion	86500	-	-	-	0 01
Heptachlor	76448	0 000079	0 000079	0 52	0 0038
Heptachlor epoxide	1024573	0 000039	0 000039	0 52	0 0038
Hexachlorobenzene	118741	0 00028	0 00029	-	-
Hexachlorobutadiene	87683	0 44	18	-	-
Hexachlorocyclo-hexane-Technical	319868	0 0123	0 0414	-	-
Hexachlorocyclopentadiene	77474	40	1100	-	-
Hexachloroethane	67721	1 4	3 3	-	-
Ideno(1,2,3-cd)pyrene	193395	0 0038	0 018	-	-
Iron[8]	7439896	300	-	4,000	1,000
Isophorone	78591	35 0	960	-	-
Lead	7439921	15	-	e(1 273 (ln Hard*)-1 460)	e(1.273 (ln Hard*)-4 705)
Lindane (gamma-BHC)	58899	0 98	1.8	0 95	
Malathion	121755	-	-	-	0 1
Mercury	7439976	2 0	0 051	1.4	0 77
Methylmercury	22967926		0 3 mg/Kg		
Methoxychlor	72435	100	-	-	0 03
Methylbromide	74839	47	1,500	-	-
Methylene Chloride	75092	4 6	590	-	-
Mirex	2385855	-	-	-	0 001
Nickel	7440020	610	4,600	e(0.8460 (ln Hard*)+2 255)	e(0 8460 (ln Hard*)+0 0584)
Nitrate (as N)	14797558	10,000	-	-	-
Nitrobenzene	98953	17	690	-	-
Nitrosamines, Other	N/A	0 0008	1 24	-	-
N-Nitrosodibutylamine	924163	0 0063	0.22	-	-
N-Nitrosodiethylamine	55185	0 0008	1 24	-	-
N-Nitrosodimethylamine	62759	0 00069	3 0	-	-
N-Nitrosodi-n-Propylamine	621647	0 0050	0 51	-	-
N-Nitrosodiphenylamine	86306	3 3	6 0	-	-
N-Nitrosopyrrolidine	930552	0 016	34	-	-
Nonylphenol				28	6 6
Parathion	56382	-	-	0 065	0 013
Pentachlorobenzene	608935	1 4	1 5	-	-
Pentachlorophenol	87865	0 27	3 0	e(1 005 (pH)-4 869)	e(1.005 (pH)-5 134)
Phenol	108952	21,000	1,700,000	-	-
Polychlorinated Biphenyls (PCBs)	N/A	0 000064	0 000064	-	0 014

Table 1

Pollutant	CAS[1] Number	Water Quality Criteria µg/L[2]			
		Human Health:		Warm Water Aquatic Habitat[3]:	
		DWS[4]	Fish[5]	Acute[6]	Chronic[7]
Pyrene	129000	830	4,000	-	-
Selenium	7782492	170	4,200	20	5 0
Silver	7440224	-	-	e(1.72 (ln Hard*)-6 .59)	-
Sulfate	N/A	250,000	-	-	-
Hydrogen Sulfide, Undissociated	7783064	-	-	-	2 0
Tetrachloroethylene	127184	0 69	3 3	-	-
Thallium	7440280	0 24	0 47	-	-
Toluene	108883	1300	15,000	-	-
Total Dissolved Solids	N/A	250,000	-	-	-
Toxaphene	8001352	0 00028	0 00028	0 73	0 0002
Tributyltin (TBT)				0 46	0 072
Trichloroethylene	79016	2 5	30	-	-
Vinyl Chloride	75014	0 025	2 4	-	-
Zinc	7440666	7,400	26,000	e(0 8473 (ln Hard*)+ 0 884)	e(0 8473 (ln Hard*)+ 0 884)
1,1-dichloroethylene	75354	330	7100	-	-
1,1,1-trichloroethane	71556	200	-	-	-
1,1,2-trichloroethane	79005	0 59	16	-	-
1,1,2,2-tetrachloroethane	79345	0 17	4 0	-	-
1,2-dichlorobenzene	95501	420	1300	-	-
1,2-dichloroethane	107062	0 38	37	-	-
1,2-dichloropropane	78875	0 50	15	-	-
1,2-diphenylhydrazine	122667	0 036	0 20	-	-
1,2-trans-dichloroethylene	156605	140	10,000	-	-
1,2,4-trichlorobenzene	120821	35	70	-	-
1,2,4,5-tetrachlorobenzene	95943	0 97	1.1	-	-
1,3-dichlorobenzene	541731	320	960	-	-
1,3-dichloropropene	542756	0 34	21	-	-
1,4-dichlorobenzene	106467	63	190	-	-
2-chloronaphthalene	91587	1,000	1,600	-	-
2-chlorophenol	95578	81	150	-	-
2-methyl-4,6-dinitrophenol	534521	13	280	-	-
2,3,7,8-TCDD (Dioxin)	1746016	5 0 E - 9	5 1 E - 9	-	-
2,4-D	94757	100	-	-	-
2,4-dichlorophenol	120832	77	290	-	-
2,4-dimethylphenol	105679	380	850	-	-
2,4-dinitrophenol	51285	69	5,300	-	-
2,4-dinitrotoluene	121142	0 11	3 4	-	-
2,4,5-TP (Silvex)	93721	10	-	-	-
2,4,5-trichlorophenol	95954	1,800	3,600	-	-
2,4,6-trichlorophenol	88062	1 4	2 4	-	-
3,3'-dichlorobenzidine	91941	0 021	0 028	-	-
4,4'-DDD	72548	0 00031	0 00031	-	-
4,4'-DDE	72559	0 00022	0 00022	-	-
4,4'-DDT	50293	0 00022	0 00022	1,1	0 001

[1]CAS = Chemical Abstracts Service.

[2]Water quality criteria in µg/L unless reported in different units.

[3]Metal concentrations shall be total recoverable metals to be measured in an unfiltered sample, unless it can be demonstrated that a more appropriate analytical technique is available that provides a measurement of that portion of the metal present which causes toxicity to aquatic life.

[4]DWS = Domestic Water Supply Source

[5]Fish = Fish Consumption.

[6]Acute criteria = protective of aquatic life based on one (1) hour exposure that does not exceed the criterion for a given pollutant.

[7]Chronic = protective of aquatic life based on ninety-six (96) hour exposure that does not exceed the criterion of a given pollutant more than once every three (3) years on the average.

[8]The chronic criterion for iron shall not exceed three and five tenths (3.5) mg/l (thirty-five hundred [3500] µg/l) if aquatic life has not been shown to be adversely affected.

*Hard = Hardness as mg/l $CaCO_3$

(2) The following additional criteria for radionuclides shall apply for Drinking Water Supply use:

(a) The gross total alpha particle activity, including radium-226 but excluding radon and uranium, to exceed fifteen (15) pCi/l;

(b) Combined radium-226 and radium-228 to exceed five (5) pCi/l. Specific determinations of radium-226 and radium-228 are not necessary if dissolved gross alpha particle activity does not exceed five (5) pCi/l;

(c) The concentration of total gross beta particle activity to exceed fifty (50) pCi/l;

(d) The concentration of tritium to exceed 20,000 pCi/l;

(e) The concentration of total Strontium-90 to exceed eight (8) pCi/l; or
(f) The concentration of uranium to exceed thirty (30) µg/l.

[Table 1					
Pollutant	CAS[1] Number	Water Quality Criteria µg/L[2]			
		Human Health:		Warm Water Aquatic Habitat[3]:	
		DWS[4]	Fish[5]	Acute	Chronic
Acenaphthene	83329	670	990		
Acrolein	107028	190	290		
Acrylonitrile	107131	0.051	0.25		
Aldrin	309002	0.000049	0.000050	3.0	
alpha-BHC	319846	0.0026	0.0049		
alpha-Endosulfan	959988	62	89	0.22	0.056
Anthracene	120127	8,300	40,000		
Antimony	7440360	5.6	640		
Arsenic	7440382	10.0		340	150
Asbestos	1332214	7 million fibers/L			
Barium	7440393	1,000			
Benzene	71432	2.2	51		
Benzidine	92875	0.000086	0.00020		
Benzo(a)anthracene	56553	0.0038	0.018		
Benzo(a)pyrene	50328	0.0038	0.018		
Benzo(b)fluoranthene	205992	0.0038	0.018		
Benzo(k)fluoranthene	207089	0.0038	0.018		
Beryllium	7440417	4			
Beta-BHC	319857	0.0091	0.017		
Beta-Endosulfan	33213659	62	89	0.22	0.056
bis(chloromethyl)ether	542881	0.00010	0.00029		
bis(2-chloroethyl)ether	111444	0.030	0.53		
bis(2-chloroisopropyl)ether	108601	1,400	65,000		
bis(2-ethylhexyl)phthalate	117817	1.2	2.2		
Bromoform	75252	4.3	140		
Butylbenzyl phthalate	85687	1,500	1,900		
Cadmium	7440439	5		e(1.0166 (ln Hard*) 3.924)	e(0.7409 (ln Hard*) 4.719)
Carbon tetrachloride	56235	0.23	1.6		
Chlordane	57749	0.00080	0.00081	2.4	0.0043
Chloride	16887006	250,000		1,200,000	600,000
Chlorobenzene	108907	680	21,000		
Chlorodibromomethane	124481	0.40	13		
Chloroform	67663	5.7	470		
Chlorpyrifos	2921882			0.083	0.041
Chromium	N/A	100			
Chromium (III)	16065831			e(0.8190 (ln Hard*) + 3.7256)	e(0.8190 (ln Hard*) + 0.6848)
Chromium (VI)	18540299			16	11
Chrysene	218019	0.0038	0.018		
Color	N/A	75 Platinum Cobalt Units			
Copper	7440508	1,300		e(0.9422 (ln Hard*) 1.700)	e(0.8545 (ln Hard*) 1.702)
Cyanide, Free	57125	700	220,000	22	5.2
Demeton	8065483				0.1
Dibenzo(a,h)anthracene	53703	0.0038	0.018		
Dichlorobromomethane	75274	0.55	17		
Dieldrin	60571	0.000052	0.000054	0.24	0.056
Diethyl phthalate	84662	17,000	44,000		
Dimethyl phthalate	131113	270,000	1,100,000		
Di-n-butyl phthalate	84742	2,000	4,500		
Dinitrophenols	25550587	69	5300		
Endosulfan sulfate	1031078	62	89		
Endrin	72208	0.76	0.81	0.086	0.036
Endrin aldehyde	7421934	0.29	0.30		
Ethylbenzene	100414	3,100	29,000		
Fluoranthene	206440	130	140		
Fluorene	86737	1,100	5,300		
Fluoride	N/A	2,000			

Foaming Agents	N/A	500			
gamma-BHC (Lindane)	58899	0.019	0.063	0.95	
Guthion	86500				0.01
Heptachlor	76448	0.000079	0.000079	0.52	0.0038
Heptachlor epoxide	1024573	0.000039	0.000039	0.52	0.0038
Hexachlorobenzene	118741	0.00028	0.00029		
Hexachlorobutadiene	87683	0.44	18		
Hexachlorocyclo-hexane-Technical	319868	0.0123	0.0414		
Hexachlorocyclopentadiene	77474	240	17,000		
Hexachloroethane	67721	1.4	3.3		
Ideno(1,2,3-cd)pyrene	193395	0.0038	0.018		
Iron[6]	7439896			4,000	1,000
Isophorone	78591	35.0	960		
Lead	7439921	15		e(1.273 (ln Hard*)-1.460)	e(1.273 (ln Hard*)-4.705)
Malathion	121755				0.1
Mercury	7439976	2.0	0.051	1.7	0.91
Methoxychlor	72435	40.0			0.03
Methylbromide	74839	47	1,500		
Methylene Chloride	75092	4.6	590		
Mirex	2385855				0.001
Nickel	7440020	610	4,600	e(0.8460 (ln Hard*)+2.255)	e(0.8460 (ln Hard*)+0.0584)
Nitrate (as N)	14797558	10,000			
Nitrobenzene	98953	17	690		
Nitrosamines, Other	N/A	0.0008	1.24		
N-Nitrosodibutylamine	924163	0.0063	0.22		
N-Nitrosodiethylamine	55185	0.0008	1.24		
N-Nitrosodimethylamine	62759	0.00069	3.0		
N-Nitrosodi-n-Propylamine	621647	0.0050	0.51		
N-Nitrosodiphenylamine	86306	3.3	6.0		
N-Nitrosopyrrolidine	930552	0.016	34		
Parathion	56382			0.065	0.013
Pentachlorobenzene	608935	1.4	1.5		
Pentachlorophenol	87865	0.27	3.0	e(1.005 (pH)-4.869)	e(1.005 (pH)-5.134)
Phthalate esters	N/A				3
Phenol	108952	21,000	1,700,000		
Polychlorinated Biphenyls (PCBs)	N/A	0.000064	0.000064		0.0014
Pyrene	129000	830	4,000		
Selenium	7782492	170	4,200	20	5.0
Silver	7440224			e(1.72 (ln Hard*)-6.59)	
Sulfate	N/A	250,000			
Hydrogen Sulfide, Undissociated	7783064				2.0
Tetrachloroethylene	127184	0.69	3.3		
Thallium	7440280	1.7	6.3		
Toluene	108883	6,800	200,000		
Total Dissolved Solids	N/A	750,000			
Toxaphene	8001352	0.00028	0.00028	0.73	0.0002
Trichloroethylene	79016	2.5	30		
Vinyl Chloride	75014	2.0	530		
Zinc	7440666	7,400	26,000	e(0.8473 (ln Hard*)+0.884)	e(0.8473 (ln Hard*)+0.884)
1,1-dichloroethylene	75354	0.057	3.2		
1,1,1-trichloroethane	71556	200			
1,1,2-trichloroethane	79005	0.59	16		
1,1,2,2-tetrachloroethane	79345	0.17	4.0		
1,2-dichlorobenzene	95501	2,700	17,000		
1,2-dichloroethane	107062	0.38	37		
1,2-dichloropropane	78875	0.50	15		
1,2-diphenylhydrazine	122667	0.036	0.20		
1,2-trans-dichloroethylene	156605	700	140,000		
1,2,4-trichlorobenzene	120821	260	940		
1,2,4,5-tetrachlorobenzene	95943	0.97	1.1		
1,3-dichlorobenzene	541731	320	960		

1,3-dichloropropene	542756	10	1,700		
1,4-dichlorobenzene	106467	400	2,600		
2-chloronaphthalene	91587	1,000	1,600		
2-chlorophenol	95578	81	150		
2-methyl-4,6-dinitrophenol	534521	13	280		
2,3,7,8-TCDD (Dioxin)	1746016	5.0 E-9	5.1 E-9		
2,4-D	94757	70			
2,4-dichlorophenol	120832	77	290		
2,4-dimethylphenol	105679	380	850		
2,4-dinitrophenol	51285	69	5,300		
2,4-dinitrotoluene	121142	0.11	3.4		
2,4,5-TP (Silvex)	93721	10			
2,4,5-trichlorophenol	95954	1,800	3,600		
2,4,6-trichlorophenol	88062	1.4	2.4		
3,3'-dichlorobenzidine	91941	0.021	0.028		
4,4'-DDD	72548	0.00031	0.00031		
4,4'-DDE	72559	0.00022	0.00022		
4,4'-DDT	50293	0.00022	0.00022	1.1	0.001

[1]CAS = Chemical Abstracts Service.
[2]Water quality criteria in µg/L unless reported in different units.
[3]Metal concentrations shall be total recoverable metals to be measured in an unfiltered sample, unless it can be demonstrated to the satisfaction of the cabinet that a more appropriate analytical technique is available that provides a measurement of that portion of the metal present which causes toxicity to aquatic life.
[4]DWS = Domestic Water Supply Source.
[5]Fish = Fish Consumption.
[6]The chronic criterion for iron shall not exceed three and five tenths (3.5) mg/l if aquatic life has not been shown to be adversely affected.
[7]Hard = Hardness as mg/l $CaCO_3$.]

Section 7. Recreational Waters. (1) Primary contact recreation water. The following criteria shall apply to waters designated as primary contact recreation use during the primary contact recreation season of May 1 through October 31:

(a) Fecal coliform content or Escherichia coli content shall not exceed 200 colonies per 100 ml or 130 colonies per 100 ml respectively as a geometric mean based on not less than five (5) samples taken during a thirty (30) day period. Content also shall not exceed 400 colonies per 100 ml in twenty (20) percent or more of all samples taken during a thirty (30) day period for fecal coliform or 240 colonies per 100 ml for Escherichia coli. [These limits shall be applicable during the recreation season of May 1 through October 31.] Fecal coliform criteria listed in subsection (2)(a) of this section shall apply during the remainder of the year; and[.]

(b) pH shall be between six and zero-tenths (6.0) to nine and zero-tenths (9.0) and shall not change more than one and zero-tenths (1.0) pH unit within this range over a period of twenty-four (24) hours.

(2) Secondary contact recreation water. The following criteria shall apply to waters designated for secondary contact recreation use during the entire year:

(a) Fecal coliform content shall not exceed 1,000 colonies per 100 ml as a thirty (30) day geometric mean based on not less than five (5) samples; nor exceed 2,000 colonies per 100 ml in twenty (20) percent or more of all samples taken during a thirty (30) day period; and[.]

(b) pH shall be between six and zero-tenths (6.0) to nine and zero-tenths (9.0) and shall not change more than one and zero-tenths (1.0) pH unit within this range over a period of twenty-four (24) hours.

Section 8. Outstanding State Resource Waters. This designation category includes certain unique waters of the commonwealth.

(1) Water for inclusion.

(a) Automatic inclusion. The following surface waters shall automatically be included in this category:

1. Waters designated under the Kentucky Wild Rivers Act, KRS 146.200-146.360;

2. Waters designated under the Federal Wild and Scenic Rivers Act, 16 U.S.C. 1271-1287 [et seq.];

3. Waters identified under the Kentucky Nature Preserves Act, KRS 146.410-146.530, which are contained within a formally dedicated nature preserve or are published in the registry of natural areas in accordance with 400 KAR 2:080 and concurred upon by the cabinet; and

4. Waters that support federally recognized endangered or threatened species under the Endangered Species Act of 1973, as amended, 16 U.S.C. 1531-1544 [et seq].

(b) Permissible consideration. Other surface waters shall be considered for inclusion in this category [may be included in this category as determined by the cabinet] if:

1. The surface waters flow through or are bounded by state or federal forest land, or are of exceptional aesthetic or ecological value or are within the boundaries of national, state, or local government parks, or are a part of a unique geological or historical area recognized by state or federal designation; or

2. The surface water is a component part of an undisturbed or relatively undisturbed watershed that can provide basic scientific data and possess outstanding water quality characteristics; or fulfill two (2) of the following criteria:

a. Support a diverse or unique native aquatic flora or fauna;

b. Possess physical or chemical characteristics that provide an unusual and uncommon aquatic habitat; or

c. Provide a unique aquatic environment within a physiographic region.

(2) Outstanding state resource waters protection. The designation of certain waters as outstanding state resource waters shall fairly and fully reflect those aspects of the waters for which the designation is proposed. The cabinet shall determine water quality criteria for these waters as follows:

(a) At a minimum, the criteria of Section 2 and Table 1 of Section 6 of this administrative regulation and the appropriate criteria associated with the stream use designation assignments in 401 KAR 10:026[5:026], shall be applicable to these waters.

(b) Outstanding state resource waters that are listed as Exceptional Waters in 401 KAR 10:030, Section 1(2) shall have dissolved oxygen maintained at a minimum concentration of six and zero-tenths (6.0) mg/l as a twenty-four (24) hour average and an instantaneous minimum concentration of not less than five and zero-tenths (5.0) mg/l.

(c)1. If the values identified for an outstanding state resource water are dependent upon or related to instream water quality, the cabinet shall review existing water quality criteria and determine if additional criteria or more stringent criteria are necessary for protection, and evaluate the need for the development of additional data upon which to base the determination.

2. Existing water quality and habitat shall be maintained and protected in those waters designated as outstanding state resource

waters that support federally threatened and endangered species of aquatic organisms, unless it can be demonstrated [to the satisfaction of the cabinet,] that lowering of water quality or a habitat modification will not have a harmful effect on the threatened or endangered species that[which] the water supports.

(d)[(c)] Adoption of more protective criteria in accordance with this section shall be listed with the respective stream segment in 401 KAR 10:026[5.026].

(3) Determination of designation.

(a) A[Any] person may present a proposal to designate certain waters under this section. Documentation requirements in support of an outstanding state resource water proposal shall contain those elements outlined in 401 KAR 10:026[5.026], Section 3(3)(a) through (h).

(b)1. The cabinet shall review the proposal and supporting documentation to determine whether the proposed waters qualify as outstanding state resource waters within the criteria established by this administrative regulation.

2. The cabinet shall document the determination to deny or to propose redesignation, and a copy of the decision shall be served upon the petitioner and other interested parties.

(c) After considering all of the pertinent data, a redesignation, if appropriate, shall be made pursuant to 401 KAR 10:026[5:026].

Section 9. Water Quality Criteria for the Main Stem of the Ohio River. Requirements and limits shall apply as contained in the Ohio River Valley Water Sanitation Commission's Pollution Control Standards for Discharges to the Ohio River, 2006 Revision. [The following criteria apply to the main stem of the Ohio River from its juncture with the Big Sandy River at River Mile 317.1 to its confluence with the Mississippi River, and shall not be exceeded. These waters are subject to all applicable provisions of 401 KAR 5:002, 5:026, 5:029, 5:030, and this administrative regulation.

(1) Dissolved oxygen. Concentrations shall average at least five and zero tenths (5.0) mg/l per calendar day and shall not be less than four and zero tenths (4.0) mg/l except during the April 15-June 15 spawning season when a minimum of five and one tenth (5.1) mg/l shall be maintained.

(2) Temperature.

(a) Allowable stream temperatures are:

Month/Date	Period Average (°F)	Instantaneous Maximum (°F)
January 1-31	45	50
February 1-29	45	50
March 1-15	51	56
March 16-31	54	59
April 1-15	58	64
April 16-30	64	69
May 1-15	68	73
May 16-31	75	80
June 1-15	80	85
June 16-30	83	87
July 1-31	84	89
August 1-31	84	89
September 1-15	84	87
September 16-30	82	86
October 1-15	77	82
October 16-31	72	77
November 1-30	67	72
December 1-31	52	57

(b) A successful demonstration conducted for thermal discharge limitations under Section 316(a) of the Clean Water Act shall constitute compliance with these temperature criteria.

(3) Maximum allowable instream concentrations for specific pollutants for the protection of human health are listed in Table 2 of subsection (4) of this section. They shall be met at the edge of the assigned mixing zone.

(4) To provide for the protection of warm water aquatic life habitats, the criteria in Table 2 of this subsection shall be met at the edge of the assigned mixing zone.

Table 2

Pollutant	Human Health Criteria in µg/L[1]	Warm Water Aquatic Habitat Criteria in µg/L[2]	
		Acute	Chronic
Arsenic	10.0		
Barium	2,000		
Cadmium	250,000	e(1.0166 (ln Hard*) -3.924)	e(0.7409 (ln Hard*) -4.719)
Chloride			
Chromium, hexavalent		16	11
Copper		e(0.9422 (ln Hard*) -1.700)	e(0.8545 (ln Hard*) -1.702)
Cyanide, Free		22	5.2
Fluoride	2,000		
Lead		e(1.273 (ln Hard*) -1.460)	e(1.273 (ln Hard*) -4.705)
Mercury			
Nickel		e(0.8460 (ln Hard*)+2.255)	e(0.8460 (ln Hard*)+0.0584)
Nitrite + Nitrate – Nitrogen	10,000		
Nitrite – Nitrogen	1,000		
Phenolics	5		
Silver	100	e(1.72 (ln Hard*) -6.59)	
Sulfate	250,000		
Zinc		(0.8473 (ln Hard*)+0.884)	e(0.8473 (ln Hard*)+0.884)

[1]Metal concentrations, for the purposes of human health criteria, shall be total recoverable values except hexavalent chromium, which is dissolved.

[2]Metal concentrations, for the purposes of warm water aquatic habitat criteria, shall be total recoverable metals to be measured in an unfiltered sample, unless it can be demonstrated to the satisfaction of the cabinet that a more appropriate analytical technique is available that provides a measurement of that portion of the metal present which causes toxicity to aquatic life.

*Hard = Hardness as mg/l $CaCO_3$

(5) The net discharge of aldrin, dieldrin, DDT, including DDD and DDE, endrin, toxaphene, benzidine, and PCBs is prohibited.]

Section 10. Exceptions to Criteria for Specific Surface Waters. (1) The cabinet may grant exceptions to the criteria contained in Sections 2, 4, 6, 7, 8, and 9 of this administrative regulation for specific surface water upon demonstration by an applicant that maintenance of applicable water quality criteria is not attainable or scientifically valid but the use designation is still appropriate. [This determination shall be made on a case-by-case basis with respect to a specific surface water following an analysis for each area.]

(2) The analysis shall show that the water quality criteria cannot be reasonably achieved, either on a seasonal or year- round basis due to natural conditions[,] or site-specific factors differing from the conditions used to derive criteria in Sections 2, 4, 6, 7, 8, and 9 of this administrative regulation.

(a) Site-specific criteria shall be developed by the applicant utilizing toxicity tests, indicator organisms, and application factors that shall be[are] consistent with those outlined in Chapter 3 of [":]Water Quality Standards Handbook[", EPA, 1994[, incorporated by reference in Section 12 of this administrative regulation].

(b) In addition, an applicant shall supply the documentation listed in 401 KAR 10:026[5.026], Section 3.

(3) An exception to criteria listed in Table 1 of Section 6 of this administrative regulation for the protection of human health from the consumption of fish tissue may be granted if it is[can be] demonstrated that natural, ephemeral, intermittent or low flow conditions or water levels preclude the year-round support of a fishery, unless these conditions may be compensated for by the discharge of sufficient volume of effluent discharges.

(4) Before granting an exception to water quality criteria, the cabinet shall ensure that the water quality standards of downstream waters shall be[are] attained and maintained.

(5) All exceptions to water quality criteria shall be subject to review at least every three (3) years.

(6) Exceptions to water quality criteria shall be adopted as an administrative regulation by listing them with the respective surface water in 401 KAR 10:026[5:026].

Section 11. Exceptions to Criteria for Individual Dischargers. (1) An exception to criteria may be granted to an individual discharger based on a demonstration by the discharger, following the guidelines in ["]Interim Economic Guidance for Water Quality Standards Workbook["], EPA March 1995 [~~incorporated by reference in Section 12. of this administrative regulation~~], that KPDES permit compliance with existing instream criteria shall result in substantial and widespread adverse economic and social impacts.

(2) The demonstration shall include an assessment of alternative pollution control strategies and biological assessments that indicated designated uses are being met.

(3) Before granting an exception, the cabinet shall ensure that the water quality standards of downstream waters shall be[are] attained and maintained.

(4) All exceptions shall be submitted to the cabinet for review at least every three (3) years. Upon review, the discharger shall demonstrate to the cabinet the[~~that a reasonable~~] effort the discharger[~~has been~~] made to reduce the pollutants in the discharge to levels that would achieve existing applicable water quality criteria.

(5) The highest level of effluent quality that can be economically and technologically achieved shall be ensured while the exception is in effect.

(6) The Kentucky Pollution Discharge Elimination System permitting program shall be the mechanism for the review and public notification of intentions to grant exceptions to criteria.

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

(a) "Water Quality Standards Handbook-Chapter 3", EPA August 1994, Publication EPA-823-B-94-005a, U.S. Environmental Protection Agency, Office of Water, Washington, D.C.

(b) "Interim Economic Guidance for Water Quality Standards Workbook", EPA March 1995, Publication EPA-823-B-95-002, U.S. Environmental Protection Agency, Office of Water, Washington, D.C.

(c) Ohio River Valley Water Sanitation Commission's "Pollution Control Standards for Discharges to the Ohio River", 2006 Revision.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Water, 14 Reilly Road, Frankfort, Kentucky, Monday through Friday, 8 a.m. to 4:30 p.m.

ROBERT D. VANCE, Secretary

APPROVED BY AGENCY: June 5, 2008

FILED WITH LRC: June 12, 2008 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 23, 2008 at 6.30 p.m. (Eastern Time) at the Capitol Annex, Room 149, 702 Capitol Avenue, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by July 16, 2008, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. If you request a transcript, you may be required to pay for it. 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, 2008. 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: Abigail Powell, Regulations Coordinator, Division of Water, 14 Reilly Road, Frankfort, Kentucky 40601, phone (502) 564-3410 fax (502) 564-0111, email Abigail.Powell@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Sandy Gruzesky, Director

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets forth water quality standards for surface waters of the Commonwealth and the associated water quality criteria necessary to protect designated uses.

(b) The necessity of this administrative regulation: This administrative regulation is necessary for the protection of public health, aquatic habitat, and designated uses of the surface waters of the Commonwealth.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to KRS 224.10-100 which requires the Environmental and Public Protection Cabinet to develop and conduct a comprehensive program for the management of water resources and to provide for the prevention, abatement, and control of water pollution. This administrative regulation and 401 KAR 10:001, 10:026, 10:029, and 10:030 establish procedures to protect the surface waters of the Commonwealth, and thus manage water resources and prevent water pollution. This administrative regulation describes the criteria applied in 401 KAR 10:026 to the surface waters of the Commonwealth. This administrative regulation establishes water quality standards that consist of designated legitimate uses of the surface waters of the Commonwealth and the associated water quality criteria necessary to protect those uses.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the administration of the statutes by providing specific criteria and water quality standards for the protection of surface waters of the Commonwealth as required by the authorizing statutes.

(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 water quality criteria to reflect scientific developments. Water quality criteria for domestic water supply sources have been revised to include 2 new limits, 14 stricter limits, and 4 less strict limits. Water quality criteria for fish tissue have been revised to include 2 new limits, 13 stricter limits, and 2 less strict limits. Water quality criteria for warm water aquatic habitat acute values have been revised to include 3 new limits and 2 stricter limits. Water quality criteria for warm water aquatic habitat chronic values have been revised to include 2 new limits, 2 stricter limits, and eliminate 1 limit. Criteria for radionuclides, which are based on Maximum Contaminant Levels for finished drinking water in the Safe Drinking Water Act, have been moved from minimum criteria applicable to all waters to apply only to domestic water supply use. Dissolved oxygen criteria of 6.0 mg/l average and 5 0 mg/l minimum have been added for Outstanding State Resource Water. Criteria for the Ohio River main stem are now based entirely on the latest edition of the Ohio River Valley Water Sanitation Commission Pollution Control Standards.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to revise criteria to protect human health and to meet federal recommendations. For Kentucky to maintain its delegation over the NPDES permit program, the Clean Water Act requires that Kentucky review its water quality standards every three years and comply with the programmatic requirements of 40 C.F.R. Part 131. This administrative regulation is being amended as part of the triennial review.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to KRS 224.10-100 which requires the Environmental and Public Protection Cabinet to develop and conduct a comprehensive program for the management of water resources and to provide for the prevention, abatement, and control of water pollution. This amendment establishes procedures to protect the surface waters of the Commonwealth, and thus protect water resources. This amendment establishes

water quality standards that consist of designated legitimate uses of the surface waters of the Commonwealth and the associated water quality criteria necessary to protect those uses.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will assist in the administration of the statutes by providing revised and up-to-date criteria and water quality standards for the protection of surface waters of the Commonwealth in accordance with the intent of the authorizing statutes

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation. This administrative regulation will not affect permitted facilities until they apply for reissuance of their KPDES permits. The amendment will affect any new, previously unpermitted wastewater dischargers. Municipalities with approved pretreatment programs set local limits for their industrial dischargers. These dischargers may be affected by this amended administrative regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The revised water quality criteria will be implemented at the time of permit issuance at existing facilities and new dischargers and expanded facilities will comply with the revisions. Additional costs may be incurred where criteria are more stringent than before or where new criteria are established.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The costs to comply with this administrative regulation will vary considerably depending on the site location, the type of activity occurring, and other factors. Therefore, it is not possible to determine quantitative costs to implement this regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Less costs may be incurred where criteria are less stringent than previously or where criteria have been eliminated

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

(a) Initially: This amendment does not change routine procedures involved in managing construction grants, permitting, compliance monitoring, or enforcement. Implementation costs should remain relatively constant.

(b) On a continuing basis: No major costs are anticipated. The cabinet, in implementing the requirements of this amended administrative regulation, will internalize associated costs with normal budget appropriations.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation? The source of revenue will be the General Fund and federal funds, as appropriated by the Kentucky General Assembly.

(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: Fees or funding increases are not anticipated to be necessary to the implementation of this amendment.

(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 fees nor directly nor indirectly increase any fees.

(9) TIERING: Is tiering applied? Yes, tiering is applied in this administrative regulation. 401 KAR 10:031 requires less stringent dissolved oxygen criteria for the new Modified Warm Water Aquatic Habitat use. It also provides special requirements for dischargers to cold water aquatic habitat. Any waterway categorized as an outstanding state resource water will also have special requirements according to this administrative regulation, and more stringent dissolved oxygen criteria have been added for Outstanding State Resource Water.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will affect the wastewater treatment operations of local government if they will have new or expanded discharges into surface waters of the Commonwealth.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. This amended administrative regulation relates to local governments' wastewater treatment service. KRS 224.10-100, 224.70-100, and 224.70-110 mandate action taken by this administrative regulation.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This regulation will not generate any revenue

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This regulation will not generate any revenue.

(c) How much will it cost to administer this program for the first year? There will be no cost to state or local agencies to implement this regulation.

(d) How much will it cost to administer this program for subsequent years? There will be no cost to state or local agencies to implement this regulation.

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

Revenues (+/-): Cannot be determined

Expenditures (+/-): Cannot be determined

Other Explanation: This amended administrative regulation sets forth protective criteria for instream uses designated by the cabinet (see 401 KAR 10:026). Local governments will be required to discharge effluents which assure attainment of the receiving surface water's designated uses. The costs or savings of this amended administrative regulation would ordinarily be passed through to users; however, a local government that owns a public wastewater treatment system could elect to absorb some or all of the costs or savings. The revised water quality criteria will be implemented at the time of permit issuance at existing facilities and new dischargers and expanded facilities will comply with the revisions. Additional costs may be incurred where criteria are more stringent than before or where new criteria are established and less costs may be incurred where criteria are less stringent than previously or where criteria have been eliminated. Some dischargers with KPDES permits may apply to increase discharge limits, resulting in more antidegradation reviews

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. There is no federal statute or regulation mandating that Kentucky implement a water pollution control program. For Kentucky to maintain its delegation over the NPDES permit program, the Clean Water Act requires that Kentucky review its water quality standards every three years and comply with the programmatic requirements of 40 C.F.R. Part 131, including the requirement for reviewing water quality criteria for appropriate revisions.

2. State compliance standards. 401 KAR 10.001, 10.026, 10.029, 10.030, and 10:031, the water quality standards regulations.

3. Minimum or uniform standards contained in the federal mandate. The Clean Water Act requires designated uses, criteria, standards and antidegradation policies in water quality standards.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements

than those required by the federal mandate? No

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. There are no stricter standards or additional or different responsibilities or requirements.

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department for Environmental Protection
Division for Air Quality
(Amendment)

401 KAR 50:066. Conformity of transportation plans, programs, and projects.

RELATES TO: KRS 224.10-100, 224.20-100, 224.20-110, 23 C.F.R. Part 450, 40 C.F.R. 51.390, Part 93, 49 C.F.R. Part 613, 23 U.S.C. 109, 134, 42 U.S.C. 7506(c)(4), 49 U.S.C. 53

STATUTORY AUTHORITY: KRS 224.10-100(5), 224.20-100, 224.20-110, [40 C.F.R. 51.390, Part 93,] 42 U.S.C. 7506(c)(4)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100(5) authorizes[requires] the Environmental and Public Protection Cabinet to promulgate[prescribe] administrative regulations for the prevention, abatement, and control of air pollution. [The federal regulation incorporated by reference in]This administrative regulation adopts the Federal Transportation Conformity Rules as codified in 40 C.F.R. Part 93 Subpart A and incorporates a guidance document that establishes [policy], criteria[,] and procedures for the interagency consultation process used in demonstrating conformity of federal transportation plans to the Kentucky State Implementation Plan.

Section 1. All transportation plans, transportation improvement plans, and projects subject to 40 C.F.R. 93, Subpart A, shall be found to conform to the Kentucky State Implementation plan before they are implemented. This finding of conformity shall be done in accordance with the consultation procedures outlined in the document "Transportation Conformity: A Guide for Interagency Consultation" that is incorporated by reference.[Definitions. As used in 40 C.F.R. 51.390, "EPA" means the U.S. Environmental Protection Agency].

Section 2. Incorporation by Reference. (1) "Transportation Conformity: A Guide for Interagency Consultation", May 2008, is incorporated by reference.[40 C.F.R. 51.390, (40 C.F.R. 51, Subpart T), Conformity to State or Federal Implementation Plans of Transportation Plans, Programs, and Projects Developed, Funded or Approved Under Title 23 U.S.C. (Federal Transit Laws), as published in the Federal Register, (62 FR 43801), August 15, 1997, is incorporated by reference.]

(2) This [The] material [incorporated by reference] may be [obtained,] inspected, [or] copied, or obtained, subject to applicable copyright law, at the following offices of the Division for Air Quality, Monday through Friday, 8 a.m. to 4:30 p.m.:

(a) The Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky 40601, (502) 573-3382;

(b) Ashland Regional Office, 1550 Wolohan Drive, Suite 1, Ashland, Kentucky 41102-8942, (606) 929-5285;

(c) Bowling Green Regional Office, 1508 Westen 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, 233 Birch Street, Suite 2, Hazard, Kentucky 41701, (606) 435-6022;

(f) London Regional Office, 875 S. Main Street, London, Kentucky 40741, (606) 330-2080;

(g) Owensboro Regional Office, 3032 Alvey Park Drive W., Suite 700, Owensboro, Kentucky 42303, (270) 687-7304; and

(h) Paducah Regional Office, 130 Eagle Nest Drive, Paducah, Kentucky 42003, (270) 898-8468.

[(3) Copies of the Federal Register are available for sale from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.]

ROBERT D. VANCE, Secretary

APPROVED BY AGENCY: June 6, 2008

FILED WITH LRC: June 11, 2008 at 2 p.m.

PUBLIC HEARING AND COMMENT PERIOD: A public hearing on this amendment will be held on July 29, 2008, at 10 a.m. (local time) 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 (5) workdays prior to the hearing, of their intent to attend. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed amendment. A transcript of the public hearing will be made. If you request a transcript, you will be required to pay for the transcript. 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. If you do not wish to be heard at the hearing, you may submit written comments on the proposed amendment. Written comments will be accepted until close of business on July 31, 2008. Send written notification of intent to be heard at the hearing or written comments on the proposed amendment to the contact person.

CONTACT PERSON: Ty Martin, Environmental Technologist I, Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky 40601, phone (502) 573-3382, fax (502) 573-3787, and email: ty.martin@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Ty Martin

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes procedures for interagency consultation that shall be used between Metropolitan Planning Organizations, the Kentucky Transportation Cabinet, Federal Highway Administration, Federal Transit Administration, state and local air quality agencies, and the Environmental Protection Agency in making conformity determinations and developing applicable implementation plans.

(b) The necessity of this administrative regulation: The U.S. EPA is requiring all states and the District of Columbia to revise their State Implementation Plans (SIPs) to include procedures to be used for interagency consultation between federal, state, and local transportation and air quality agencies in the determination of conformity of transportation plans, programs, and projects.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 224.10-100(5) requires the cabinet to promulgate administrative regulations for the prevention, abatement, and control of air pollution. A conformity determination means that the transportation plan, program, or project does not increase the severity or frequency of violation of transportation-related National Ambient Air Quality Standard (NAAQS).

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: By ensuring that transportation plans, programs, and projects do not increase the severity or frequency of violations of transportation-related NAAQS, the entities that participate in the interagency consultation procedures outlined in this administrative regulation will help ensure the timely attainment of NAAQS in non-attainment areas and the continuing improvement of air quality in areas with maintenance plans.

(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 a reference to an outdated federal regulation and incorporates a document containing procedures that shall be followed in the consultation between agencies that must be made before a finding of conformity is made for a transportation plan, program, or project.

(b) The necessity of the amendment to this administrative regulation: The previous version of this administrative regulation references a version of a federal regulation that is no longer current. The updated version of 40 C.F.R. 51.390 requires states to add interagency consultation procedures to be used in conformity

determinations made for transportation plans, programs, and projects.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 224.10-100(5) requires the cabinet to promulgate administrative regulations for the prevention, abatement, and control of air pollution. A conformity determination for a transportation plan, program, or project means that that transportation plan, program, or project does not increase the seventy or frequency of violations of transportation-related National Ambient Air Quality Standard.

(d) How the amendment will assist in the effective administration of statutes: The consultation procedures added by this amendment will allow for federal funding of transportation projects that do not prevent the timely attainment of the NAAQS in non-attainment areas in Kentucky.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Kentucky Transportation Cabinet, Kentucky Division for Air Quality, Metropolitan Planning Organizations (MPOs), local air quality agencies, and other recipients of federal transportation funding have responsibilities in the conformity determination process, as spelled out by the document incorporated in this administrative regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The entities identified in question 3 will have to fulfill their roles in the interagency consultation process as defined in the guidance document incorporated by reference in this administrative regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There should be no additional costs for the entities identified in question (3) as they are already performing the activities required of them by this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Section 176 of the Clean Air Act limits federal funding of transportation plans, programs, and projects that would contribute to the frequency or seventy of violations of any NAAQS in an area designated non-attainment or with a maintenance plan for any transportation-related criteria pollutant. By assuring all plans, programs, and projects in these areas do not contribute to the frequency or severity of violations, the agencies identified will ensure that they can receive federal funding for those plans, programs, and projects.

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

(a) Initially: The cabinet will not incur any additional costs for the implementation of this administrative regulation.

(b) On a continuing basis: There will not be any continuing costs for the implementation of this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The cabinet's current operating budget will be used for the implementation and enforcement of this administrative regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: 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? Yes. This administrative regulation only applies to agencies responsible for transportation plans, programs, and projects when those plans, programs, and projects are located in areas designated non-attainment, or with maintenance plans, for transportation-related criteria pollutants and their precursors, or to areas that contribute to violations of NAAQS in areas designated non-attainment, or with maintenance plans, for transportation-related criteria pollutants.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Transportation Cabinet, Kentucky Division for Air Quality, Metropolitan Planning Organizations (MPOs), local air quality agencies, and other recipients of federal transportation funding have responsibilities in the conformity determination process, as spelled out by the document incorporated in this administrative regulation.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 224.10-100(5), 224.20-100, 224 20-110, 42 U.S.C. 7506(c)(4).

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation generates no revenues.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation generates no revenues.

(c) How much will it cost to administer this program for the first year? The Division's operating budget continues as the source of funding for the implementation of this program.

(d) How much will it cost to administer this program for subsequent years? There will be no additional costs for administering the program in subsequent years.

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

Revenues (+/-):
Expenditures (+/-):
Other Explanation:

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. The federal mandate is 40 C.F.R. Part 51, Subpart T.

2. State compliance standards. The state compliance standards are found in KRS 224.10-100(5), 224.20-100, 224.20-110, and 224.20-120.

3. Minimum or uniform standards contained in the federal mandate. The federal mandate requires states to include, in their implementation plan, procedures for interagency consultation among federal, state, and local entities, resolution of conflict, and public consultation in determining conformity of transportation plans, programs, and projects.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. This administrative regulation is no more stringent than the federal regulation.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Stricter standards or requirements are not imposed.

JUSTICE AND PUBLIC SAFETY CABINET
Department of Corrections
Sex Offender Risk Assessment Advisory Board
(Amendment)

501 KAR 6:200. Comprehensive sex offender presentence evaluation procedure.

RELATES TO: KRS 17.550-17.991
STATUTORY AUTHORITY: KRS 17.554(2), 17.564
NECESSITY, FUNCTION, AND CONFORMITY: KRS 17.554(2) authorizes the Sex Offender Risk Assessment Advisory Board to promulgate administrative regulations to establish a comprehensive sex offender presentence evaluation procedure for court-ordered evaluations of sex offenders. This administrative regulation establishes the evaluation procedure to assure the quality of court-order comprehensive sex offender presentence evaluations.

Section 1. Definitions. (1) "Amenability to treatment" means at the time of the evaluation, the offender is free from organic or psychological impairment that shall prevent the offender from engaging meaningfully in sex offender treatment and he is, at least minimally, receptive to the treatment process.

(2) "Appropriate setting" means a secure institutional setting or a community-based setting.

(3) "Approved provider" is defined by KRS 17.550(3).

(4) "Board" is defined by KRS 17.550(1).

(5) "Clinically adjusted" means changing the risk level recommendation based on facts or evidence which indicate to an approved provider that the probability of recidivism ranges are inappropriate for a sex offender.

(6) "Comprehensive sex offender presentence evaluation" means a comprehensive mental health evaluation by an approved provider that includes a focus on the clinical data necessary to address the four (4) factors listed in KRS 17.554(2).

(7) "Nature of required sex offender treatment" means the treatment management issues including recommendations for the focus of treatment, special treatment considerations, further evaluation, and restrictions to minimize the risk of recidivism.

(8) "Risk of recommitting a sex crime" means a designation of high or not high risk based on the finding of the instrument and other clinically relevant data where sexual reoffense is more likely than not

(9) "Sex offender" is defined by KRS 17.550(2).

(10) "Treatment effectiveness" is defined in KRS 197.400

Section 2. Comprehensive Sex Offender Presentence Evaluation Procedures. (1) An approved provider shall conduct a comprehensive mental health evaluation following the professional standards of care in the area of his certification or licensure. This shall include a face-to-face interview and a review of collateral information. The face-to-face interview may be conducted by videoconferencing if it allows the approved provider to see the offender at all times during the interview. When the results of initial mental health screening procedure dictate, additional appropriate psychological testing addressing cognitive functioning, mental illness, and severe characterological impairment shall be employed as circumstances allow.

(2) Risk of recommitting a sex crime shall be determined in the following manner: Where applicable, an actuarial instrument shall be used which is appropriate to the sex offender. The results of the instrument may be clinically adjusted at the discretion of the evaluator. If an actuarial instrument is not appropriate, an empirically guided approach shall be used. The board shall identify the appropriate instrument for use, and the list of board approved instruments shall be available upon request to the Department of Corrections.

(3) The threat to public safety shall be determined in the following manner:

(a) The evaluator shall consider the following domains in assessing the sex offender's immediate threat to public safety and in arriving at a recommendation regarding an appropriate treatment setting:

1. The sex offender's amenability to treatment;
2. The degree of threat of harm or actual force employed in the index offense and in prior offenses;
3. The nature and duration of the offending;
4. The sex offender's psychological adjustment;
5. The sex offender's social and occupational adjustment; and
6. The sex offender's statements or indications of harm directed to another.

(b) The evaluator shall make a recommendation as to the appropriate setting in which treatment, if indicated, shall be provided for the sex offender.

(4) Amenability to treatment shall be determined in the following manner: The approved provider shall address the following domains in making this assessment. The sex offender shall:

(a) Not exhibit symptoms of a psychological disturbance that may significantly inhibit treatment effectiveness.

(b) Exhibit a level of intellectual functioning sufficient to complete the task assigned in the treatment program to which he shall be referred.

(c) Acknowledge involvement in the sex offense for which he is charged.

(d) Consider his involvement in the sex offense to be a problematic behavior that he does not want to repeat.

(e) Verbalize a willingness to enter and fully participate in treatment.

(5) In addressing the nature of required sex offender treatment, the evaluator shall address management issues including recommendations for the focus of treatment, special treatment considerations, further evaluation, and restrictions to minimize the risk of recidivism.

Section 3. Evaluation Report. (1) An approved provider shall prepare a comprehensive sex offender presentence evaluation report to the court in the form of a bifurcated document.

(2) The first section of the report shall consist of information prepared specifically for the court and contain the following headings:

(a) Identifying information including name, Social Security number, date of birth and age, indictment number or county,

(b) Referral information, like reason for referral, informed consent, procedures;

(c) Information sources; and

(d) Summary, conclusions, and recommendations.

(3) The second section shall include the following information from which the summary and conclusions were reached:

(a) Criminal justice information like index offense, prior sex offense, other legal history;

(b) Psychosocial history including family of origin; education, military, occupational, and financial history; sexual and relationship history; and mental health and medical history;

(c) Behavioral observations and mental status;

(d) Psychological testing;

(e) Diagnosis impressions;

(f) Treatment considerations; and

(g) The statutory factors found in KRS 17.554(2).

(4) The report shall be entitled "Comprehensive Sex Offender Presentence Evaluation."

(5) An approved provider shall place his signature at the end of the recommendation report if he:

(a) Conducted the comprehensive sex offender presentence evaluation, or

(b) Reviewed and approved the evaluation.

(6) If the approved provider previously provided treatment to the sex offender, he shall not perform a sex offender presentence evaluation for the offender.

(7) If an approved provider has performed a sex offender presentence evaluation for the offender, he shall not provide sex offender treatment for that individual.

Section 4. Recordkeeping. (1) An approved provider may transmit all comprehensive sex offender presentence evaluation information to the board in lieu of maintaining the information for a period of fifteen (15) years.

(2) The original or a copy of all comprehensive sex offender

presentence evaluation information shall be provided to the board.

(a) Upon request; or

(b) At the death of the approved provider.

This is to certify that the Sex Offender Risk Assessment Advisory Board approved this administrative regulation prior to its filing by the Department of Corrections with the Legislative Research Commission as required by KRS 13A.120(3) and 13A 220(6)(a) as reflected by the signature above.

JAMES J. VAN NORT, Chairperson
LADONNA H. THOMPSON, Commissioner

APPROVED BY AGENCY: June 11, 2008

FILED WITH LRC: June 12, 2008 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 22, 2008 at 9 a.m. at the Justice & Public Safety Cabinet, Office of Legal Services, 125 Holmes Street, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who 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, 2008. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person:

CONTACT PERSON: Amy V. Barker, Justice and Public Safety Cabinet, Office of Legal Services, P.O. Box 2400, Frankfort, Kentucky 40602-2400, phone (502) 564-4001 ext. 336 or 333, fax (502) 564-5229

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Amy V. Barker

(1) Provide a brief summary of.

(a) What this administrative regulation does: This regulation provides the requirements for conducting court-ordered comprehensive sex offender presentence evaluations.

(b) The necessity of this administrative regulation: To conform to the requirements of KRS 17.550, et.seq.

(c) How this administrative regulation conforms to the content of the authorizing statues: The regulation states the evaluation process that the board is required to determine.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: By providing direction to mental health professionals who desire to conduct court-ordered comprehensive sex offender presentence evaluations.

(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 allows offender interviews to be conducted by videoconference.

(b) The necessity of the amendment to this administrative regulation: To provide more efficient administration of the evaluation process.

(c) How the amendment conforms to the content of the authorizing statutes: The statutes give the board regulatory authority concerning the evaluation process

(d) How the amendment will assist in the effective administration of the statutes: To provide more efficient administration of the regulations regarding evaluations and to conform to the purpose of the statutes.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This affects 62 approved providers and the sex offenders that approved providers evaluate.

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

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

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): None, unless the approved provider uses a videoconferencing service that has a fee for use instead of a face-to-face interview.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3). The changes will assist some approved providers by not requiring travel for the interview.

(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.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This regulation may impact approved providers that work for the Department of Corrections, the Department of Juvenile Justice, or private providers who choose to access a compatible videoconference system.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 17.550 et seq.

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

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

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

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

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

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

Revenues (+/-):
Expenditures (+/-):
Other Explanation:

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department of Public Protection
Office of Housing, Buildings and Construction
Division of Building Code Enforcement
(Amendment)

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

RELATES TO: KRS 198B.040(3), 198B.050(3)(c), (6), 198B.090, 198B.095

STATUTORY AUTHORITY: KRS 198B 050(5), 198B 090(1)(a)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 198B.090(1)(a) requires the office to create and administer a building inspector's certification program which is designed to ensure uniform statewide enforcement of applicable state building codes. This administrative regulation establishes the testing, training and continuing education requirements for qualifying persons to become inspectors for the enforcement of the Kentucky Building Code, and to identify the level of their responsibilities for this enforcement.

Section 1. Definitions. (1) "Certified building inspector" means a person who has completed the orientation training and module testing requirements to be classified as a one (1) and two (2) family dwelling inspector, one (1) and two (2) family dwelling mechanical inspector, mechanical inspector general, mechanical inspector and plan reviewer, or a certified building inspector, level I, II, or III, as established in Section 5 of this administrative regulation, and who is qualified to issue building permits, review construction documents, issue compliance letters and certificates of occupancy and enforce the code for the type and size of buildings described by Section 5 of this administrative regulation.

(2) "Enrolled" means an applicant has complied with the requirements established in Section 4(1) of this administrative regulation.

(3) "Limited certificate" means a document establishing that a person has passed the test for competency in one (1) or more NCPCCI test modules, and is qualified to engage in the type of limited inspections listed on the certificate which represents the level of competency for which the person was tested.

(4) "NCPCCI test module" means a test module, from the National Certification Program for Construction Code Inspectors, developed by the national code enforcement organizations for the purpose of providing nationally-recognized evidence of competency and professionalism in construction code enforcement and used to meet the module testing requirements established in Section 5 of this administrative regulation.

(5) "Trainee" means a person who is enrolled in the building inspector program of the office but has not completed the NCPCCI modules necessary to be a Kentucky certified building inspector.

Section 2. Inspection Operations. (1) Each governmental entity engaged in a building inspection program shall have in responsible charge of all construction document approvals, inspections and issuance of certificates of occupancy at least one (1) Kentucky certified building inspector with the level of credentials required for the buildings covered by the program.

(2) A trainee may be utilized in a building inspection program if the trainee operates under the general supervision of a Kentucky certified building inspector.

(a) Trainees shall not issue permits, construction document approval letters, inspection compliance letters or certificates of occupancy.

(b) A trainee holding a current limited certificate shall exercise only the duties authorized by that certificate.

(c) A limited certificate shall not be available to persons who apply after March 22, 2001.

Section 3. Training and Testing Requirements to Become Certified. A candidate seeking certification shall comply with the provisions of this section.

(1) A candidate seeking to become certified pursuant to this administrative regulation and all trainees shall be required to attend orientation training, provided or approved by the office[~~department~~]. The training sessions shall be given quarterly.

(2) Continuing education.

(a) The office shall establish continuing education programs, or the office will utilize the Code Administrators Association of Kentucky, or may approve other programs offering Continuing education and such educational programs may be funded in whole or in part, As determined by the board, through the "Building Inspectors' Financial Incentive Training Program Fund".

(b) A candidate seeking certification shall provide verification on form OHBC BC/CE-1, certificate of completion from the pre-approved training source(s) or other form of verification as pre-approved by the office, constituting a minimum of twelve (12) hours of training annually.

(c) Educational programs, for programs other than those established by the office, shall submit a request for approval of the educational program to the office no later than thirty (30) days from the date of the educational program is to be offered and receive written approval from the office to be recognized as approved training for the Kentucky Certified Building Inspector Program. The written request shall include the following:

1. The total number of continuing education hours;
2. Course syllabus;
3. A detailed outline of the contents of the course;
4. Name and address of vendor;
5. Name, address, and qualifications of instructor;
6. Program agenda with written description of class material which clearly identifies that the educational content relates to the general business skills or the technical skills required of a certified inspector which would improve the quality of the certified inspector's performance; and
7. Location and keeper of class attendance verification list (available for period of time to be not less than twelve (12) months after completion of educational program) [~~constituting of a minimum of twelve (12) hours of training annually.~~

~~(b) Participation in these programs shall be mandatory for all inspectors and trainees in order to maintain certification or continue as a trainee.~~

~~(c) An inspector shall provide the office with verification of the required continuing education on form OHBC BC/CE-1, Continuing Education Verification Form.~~]

(3) The executive director, in his discretion, may waive the time requirements in this administrative regulation for hardships shown or if circumstances warrant a waiver due to changes in testing procedures, standards or dates or other reasons which would render strict application unfair.

Section 4. Application for Training and Certification. (1) To become a trainee or a candidate for certification, a person shall submit:

(a) A completed form OHBC BC/CP-1, Initial Application Form for Kentucky Building Code Inspectors Certification Program;

(b) A fifty (50) dollar application fee; and

(c) Written proof that the applicant has met the requirements established in subsection (2) of this section.

(2) An applicant shall have:

(a)1. Graduated from high school or earned a general education diploma; and

2.a. Three (3) years experience in a responsible, directly-related construction position, such as a foreman, which required the ability to effectively read and interpret building plans and specifications; or

b. Three (3) years experience in an architect's or engineer's office performing building design or drafting duties;

(b) Graduated from a college or university with an associate degree in a design, building technology or construction-related subject; or

(c) Graduated from a college or university with a bachelor degree in architecture, engineering, fire science, or building technology.

(3) A certified inspector or trainee, including an inspector holding a limited certificate, shall be required each year to pay an annual renewal fee of fifty (50) dollars not later than the last day of the certified inspector or trainee's birth month in order to maintain certification and to continue to be registered. If a certified inspector or trainee fails to renew ninety (90) days after the last day of their birth month, an additional fifty (50) dollar fee shall be accrued.

(4) A person shall not engage in any inspection activities for the enforcement of the Kentucky Building Code, or the One- and Two-Family Dwelling Code as adopted within the Kentucky Building Code for application to one (1) and two (2) family dwellings and townhouses, unless that person is currently enrolled with the department and has otherwise complied with the requirements of this administrative regulation.

Section 5. Certification Requirements, Responsibilities and Jurisdiction for Inspectors. (1) One (1) and two (2) family dwelling inspector.

(a) A person shall be classified as a one (1) and two (2) family dwelling inspector if the person has:

1. Been tested for competency under the One- and Two-Family Dwelling Code or the Kentucky Building Code, by passing the following NCPCCI test modules:

a. Test 1A Building One- and Two-Family Dwelling; and

b. Test 4A Mechanical One- and Two-Family Dwelling;

2. Completed the orientation training required by Section 3(1) of this administrative regulation; and

3. Complied with the requirements of this administrative regulation.

(b) A one (1) and two (2) family dwelling inspector shall be qualified to perform all functions related to the enforcement of the One- and Two-Family Dwelling Code, including issuing permits, reviewing and approving construction documents, conducting on-site inspections and issuing compliance letters and certificates of occupancy for the construction of one (1) and two (2) family dwellings and townhouses.

(2) Building inspector, level I.

(a) A person shall be classified as a building inspector, level I, if the person has:

1. Been tested for competency under the One- and Two-Family Dwelling Code and the Kentucky Building Code, by passing the following NCPCCI test modules:

a. Test 1A Building One- and Two-Family Dwelling,

b. Test 4A Mechanical One- and Two-Family Dwelling;

c. Test 1B Building General; and

d. Test 3B Fire Protection General;

2. Completed the orientation training required by Section 3(1) of this administrative regulation; and

3. Complied with the requirements of this administrative regulation.

(b) A building inspector, level I shall be qualified to perform all functions related to the enforcement of the Kentucky Building Code, including issuing permits, reviewing and approving construction documents, making on-site inspections, and issuing compliance letters and occupancy certificates for all buildings of the occupancy type and size assigned to local governments by KRS 198B.060(2).

(3) Building inspector, level II.

(a) A person shall be classified as a building inspector, level II, if the person has:

1. Been tested for competency under the One- and Two-Family Dwelling Code and the Kentucky Building Code, by passing the following NCPCCI test modules:

a. Test 1A Building One- and Two-Family Dwelling:

b. Test 4A Mechanical One- and Two-Family Dwelling;

c. Test 1B Building General;

d. Test 3B Fire Protection General; and

e. Test 4B Mechanical General;

2. Completed the orientation training required by Section 3(1) of this administrative regulation; and

3. Complied with the requirements of this administrative regulation.

(b) A certified building inspector, level II shall be qualified to perform functions related to the enforcement of the Kentucky Building Code for all buildings of the occupancy type and size assigned to local government under KRS 198B.060(2) including issuing permits, reviewing and approving construction documents, making on-site inspections, and issuing compliance letters and certificates of occupancy.

(c) A building inspector, level II shall be qualified to make on-site inspections of all buildings which were assigned to the department pursuant to KRS 198B 060(4).

(4) Building inspector, level III.

(a) A person shall be classified as a building inspector, level III, if the person has:

1. Been tested for competency under the One- and Two-Family Dwelling Code, Mechanical Code and the Kentucky Building Code, by passing the following NCPCCI test modules:

a. Test 1A Building One- and Two-Family Dwelling;

b. Test 4A Mechanical One- and Two-Family Dwelling;

c. Test 1B Building General;

d. Test 3B Fire Protection General;

e. Test 4B Mechanical General,

f. Test 1C Building Plan Review;

g. Test 3C Fire Protection Plan Review; and

h. Test 4C Mechanical Plan Review;

2. Completed the orientation training required by Section 3(1) of this administrative regulation; and

3. Complied with the requirements of this administrative regulation.

(b) A building inspector, level III shall be qualified to perform all functions relating to the enforcement of the Kentucky Building Code, including issuing permits, reviewing and approving construction documents, making on-site inspections and issuing compliance letters and certificates of occupancy for all buildings, regardless of size or occupancy type. A local inspector shall not be authorized to perform these functions on buildings assigned to the department by KRS 198B.060(4), except by petition to and approval of more inspection responsibility by the department pursuant to 815 KAR 7:110.

(5) Mechanical inspector, one (1) and two (2) family dwellings

(a) A person shall be classified as a mechanical inspector of one (1) and two (2) family dwellings if the person has:

1. Been tested for competency under the One- and Two-Family Dwelling Code by passing the NCPCCI test module, Test 4A Mechanical One- and Two-Family Dwelling;

2. Completed the orientation training required by Section 3(1) of this administrative regulation; and

3. Complied with the requirements of this administrative regulation.

(b) A mechanical inspector of one (1) and two (2) family dwellings shall be qualified to perform all functions related to the enforcement of the mechanical requirements of the One- and Two-Family Dwelling Code including conducting inspections of one (1) and two (2) family dwelling mechanical installations for compliance.

(6) Mechanical inspector general (other than one (1) and two (2) family dwellings).

(a) A person shall be classified as a mechanical inspector general if the person has:

1. Been tested for competency under the mechanical code, by passing the NCPCCI test module, Test 4B Mechanical General;

2. Completed the orientation training required by Section 3(1) of this administrative regulation; and

3. Complied with the requirements of this administrative regulation.

(b) A mechanical inspector general shall be qualified to perform all functions related to the enforcement of the mechanical requirements of the mechanical code including management of mechanical code enforcement activity, supervision of mechanical inspectors or plans examination, performing plans examination for compliance and conducting inspections of structures for compliance.

(7) Mechanical inspector and plan reviewer.

(a) A person shall be classified as a mechanical inspector and plan reviewer if the person has:

1. Been tested for competency under the One- and Two-Family Dwelling Code and the mechanical code, by passing the following NCPCCI test modules:

a. Test 4A Mechanical One- and Two-Family Dwelling;

b. Test 4B Mechanical General; and

c. Test 4C Mechanical Plan Review:

2. Completed the orientation training required by Section 3(1) of this administrative regulation; and

3. Complied with the requirements of this administrative regulation.

(b) A mechanical inspector and plan reviewer shall be qualified to perform all functions related to the enforcement of the mechanical requirements of the one (1) and two (2) family dwelling code and the mechanical code including management of mechanical code enforcement activity, supervision of mechanical inspectors or plans examination, performing plans examination for compliance and conducting inspections of structures for compliance.

(8) Trainees and limited certificates.

(a) A person making inspections pursuant to a limited certificate or as a trainee without a certificate shall be supervised by a Kentucky certified building inspector.

(b) A trainee or a person with a limited certificate shall not issue permits, construction document approval letters, compliance letters or certificates of occupancy, or make any official or final determinations relating to the Kentucky Building Code.

(9) A person making inspections as authorized by this administrative regulation shall not overrule, supplant or order any corrections or alterations which conflict with the approved construction documents. If an inspector believes that the construction documents are wrong or that the construction is in violation of the code, the inspector shall immediately refer the matter to the certified building inspector responsible for approval of the construction documents for resolution.

(10) Upon application by a testing agency, a national code group, or by an applicant for certification, the office may recognize other examinations as equivalent to the listed NCPCCI examinations. The person or group submitting the examination shall demonstrate that the examinations cover the same codes and require the same level of knowledge as the NCPCCI examinations.

Section 6. Suspension and Revocation of Certification. (1) Formal written complaints concerning an inspector shall be submitted to the Office of Housing, Buildings and Construction for review and appropriate action.

(2) Action shall not be taken against a building inspector governed under this administrative regulation until a hearing has been held in accordance with KRS Chapter 13B and the commissioner determines that the inspector is not enforcing the Kentucky Building Code, improperly enforcing the code or violating his responsibilities as an inspector, as required by law.

Section 7. Grandfather Clause. (1) A person who was certified as a building inspector, level I, II or III, or who held a limited certificate on December 15, 1997 shall:

(a) Not be required to take additional test modules to renew the certification, if the person has maintained continuous certification since December 15, 1997; and

(b) Complete the continuing education requirements as established in Section 3 of this administrative regulation prior to renewal of the certificate.

(2) A person who was certified on March 22, 2001, but who seeks to achieve a higher level of certification, shall comply with the testing modules required by this administrative regulation.

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

(a) Form OHBC -BC/CE 1, Continuing Education Verification Form, March 2005; and

(b) Form OHBC -BC/CP 1, Initial Application Form for Kentucky Building Code Inspectors Certification Program, March 2005.

(2) This material may be inspected, copied or obtained, subject to applicable copyright law, at the Office of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5405, Monday through Friday, 8 a.m. to 4:30 p.m.

RICHARD MOLONEY, Executive Director
LARRY R. BOND, Commissioner
HANK LIST, Deputy Secretary
For ROBERT D. VANCE, Secretary
APPROVED BY AGENCY: June 12, 2008
FILED WITH LRC: June 13, 2008 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 24, 2008, at 9 a.m., EDT, in the Office of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by July 17, 2008 (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 July 31, 2008. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation by the above date to the contact person:

CONTACT PERSON: Dawn M. Bellis, General Counsel, Office of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5405, phone (502) 573-0394 ext. 144, fax (502) 573-1057.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Dawn M. Bellis

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation provides the standards and procedures for the Kentucky Certified Building Inspector Program.

(b) The necessity of this administrative regulation: KRS 198B.090(1)(a) requires the Office to create and administer a building inspector certification program designed to ensure uniform statewide enforcement of the state building code.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation provides detailed procedures for the building inspection certification program.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: Currently this regulation sets the standards for certification of building inspectors.

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

(a) How the amendment will change this existing administrative regulation: This amendment will comply with the statutory requirement that the Board of Housing, Buildings and Construction may establish a building inspectors training program through promulgation of administrative regulations.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to follow the statutory mandate that the Board will promulgate regulations if it chooses to utilize this fund. This fund has been set up and utilized. Therefore, this amendment is to comply with the mandate to promulgate regulations.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 198B.095 requires that the Board of Housing, Buildings and Construction promulgate regulations to implement this fund to be utilized for the training of building inspectors.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will promulgate those regulations that are mandated in order to utilize the building inspectors training fund.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This will only affect those individuals who are benefited by this training fund.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to comply with this administrative regulation or amendment: The identified entities will continue to be provided training through the building inspectors training program.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no cost to the entities.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The entities will benefit by receiving training for local governments to establish and improve building code enforcement programs.

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

(a) Initially: Since this fund has been implemented and is in use, there is no cost to implement.

(b) On a continuing basis: This administrative regulation establishes no new costs or fees.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The administrative fees for plan review were increased by $.005 per square foot in 2001 to provide funding on an ongoing basis.

(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: An increase in fees or funding will not 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: It does not increase or establish fees.

(9) TIERING: Is tiering applied? Tiering is not applied because these are standards that apply equally to all construction depending upon the type of building

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? State inspectors as well as locally certified inspectors receive training from this fund.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. This regulation is authorized by KRS 198B.095.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. This fund is currently being utilized and this regulatory amendment establishes no new costs or fees.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? There will be no revenue generated from this fund.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? There will be no revenue generated by this fund.

(c) How much will it cost to administer this program for the first year? There will be no additional cost to administer this program.

(d) How much will it cost to administer this program for subsequent years? There will be no additional cost to administer this program.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation: This is a training program fund established within the Division of Building Code Enforcement that is set aside to provide training for state, as well as local, inspectors.

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department of Public Protection
Office of Housing, Buildings and Construction
(Amendment)

815 KAR 35:060. Licensing of electrical contractors, electricians, and master electricians pursuant to KRS 227A.060.

RELATES TO: KRS 227A.010, 227A.060, 227A.100

STATUTORY AUTHORITY: KRS 227A.040(1), (8), 227A.060, 227A.100(9)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 227A.040 and 227A.060 authorize the Office of Housing, Buildings and Construction to promulgate administrative regulations to establish a process for the licensing of electrical contractors, electricians, and master electricians. This administrative regulation establishes the eligibility requirements and application procedures for the licensing of electrical contractors, electricians, and master electricians.

Section 1. Application Procedure. An applicant for licensure pursuant to KRS 227A.060 shall:

(1) Complete an application as required by Section 2 of this administrative regulation;

(2) Pay the application fee required by Section 3 of this administrative regulation;

(3) Provide verifiable evidence of experience and training as specified in Section 4 of this administrative regulation; and

(4) Provide evidence of passage of the examination required by Section 5 of this administrative regulation.

Section 2. Application Requirements. (1) The applicant shall complete an application form, either Form SFM-EC-2 or Form SFM-EC-3, which shall include the following information:

(a) Applicant's name;

(b) Applicant's home address;

(c) Applicant's business address;

(d) Applicant's home and business telephone numbers;

(e) Applicant's date of birth;

(f) Applicant's Social Security number or employer identification number;

(g) Applicant's email address;

(h) Licenses applied for;

(i) For master electrician or electrician, a listing of the applicant's experience in the electrical industry, including business name and address, job title, and supervisor's name;

(j) For master electrician or electrician, a listing of all approved training or apprenticeship programs the applicant has completed;

(k) A statement confirming that the applicant is not in default on any educational loan guaranteed by the Kentucky Higher Education Assistance Authority in accordance with KRS 164.772(3);

(l) For master electrician, electrician, and electrical contractor, a passport- sized color photograph of the applicant;

(m) For electrical contractor licenses, the name and license number of the master electrician who will be affiliated with the applicant; and

(n) For electrical contractor licenses, the name of the insurer providing the applicant's liability and workers' compensation coverage and the policy number of each coverage.

(2) An applicant for reciprocity shall:

(a) Comply with the requirements set forth in the reciprocity agreement between Kentucky and the state in which the applicant is licensed; and

(b) Submit a completed Form SFM-EC-4, which shall include:

1. A statement confirming that the applicant is not in default on any educational loan guaranteed by the Kentucky Higher Education Assistance Authority in accordance with KRS 164.772(3);

2. A passport-sized color photograph of the applicant;

3. For electrical contractor licenses, proof of compliance with the insurance and workers' compensation requirements established in Section 7 of this administrative regulation; and

4. A copy of the applicant's license from the participating state.

Section 3. Application, Renewal, Reinstatement, and Late Fees. (1) The application and renewal fees shall be:

(a) $200 for an electrical contractor's license;

(b) $100 for a master electrician's license; or

(c) Fifty (50) dollars for an electrician's license.

(2) Application, renewal, reinstatement, and late fees shall not be refundable.

(3) The reinstatement fee for any lapsed license pursuant to KRS 227A.100(4) shall be equal to the license renewal fee and shall be paid in addition to the license renewal fee.

(4) The late renewal fee shall be fifty (50) dollars. If all documents required to be submitted for renewal are postmarked on or before the last day of the renewal month, the filing shall be considered timely and no late fee shall be assessed.

(5) Renewal fees for inactive licenses shall be one-half (1/2) the fee for an active license.

(6) The fee to return a license to an active status from an inactive status shall be the remaining one-half (1/2) renewal fee.

Section 4. Verification of Experience. (1) An applicant shall submit verification of experience for licensure as a master electrician or electrician.

(2) Verification shall be submitted in the form of:

(a) Tax returns or other official tax documents which indicate the applicant's occupation or the nature of the applicant's business activities, including Federal Schedule C, Form W-2, Form 1099, or local occupational tax returns;

(b) Copies of business licenses issued by a county or municipal government which did not issue electrical contractor's, master electrician's, or electrician's licenses prior to June 24, 2003 if the business license indicates the applicant operated as an electrical contractor or worker;

(c) A sworn affidavit, on the affiant's letterhead, certifying that the affiant has personal knowledge that the applicant has worked as a master electrician or an electrician from at least one (1) of the following:

1. An electrical workers union;

2. A certified electrical inspector; or

3. An employer that employed the applicant as an electrician or a master electrician; or

(d) Records of a branch of the United States Armed Forces which indicate the applicant performed a function which primarily involved electrical work. Experience gained while in the military shall be deemed to have been earned in Kentucky.

Section 5. Examinations. (1) Applicants for an electrical contractor's license, master electrician's license, or electrician's license shall pass an examination administered by an approved examination provider. Passing scores shall be valid for a period of three (3) years.

(2) For electrical contractor's licenses, applicants that are business entities shall designate a person to take the examination on behalf of the applicant. The designee shall be:

(a) An owner of the applicant;

(b) An officer of the applicant;

(c) A director of the applicant; or

(d) A full-time employee of the applicant.

(3)(a) If a person designated by an entity as provided in subsection (2) of this section leaves the employment or no longer maintains an interest in that entity, the entity shall designate another person who either:

1. Has passed the examination; or

2. Successfully passes the examination within thirty (30) days.

(b) Failure to have a designee that has passed the examination shall render the licensee no longer qualified to be licensed.

(4) Upon application by a testing agency, a national code group or by an applicant for certification, the office may recognize another examination as equivalent to an examination administered by an approved examination provider. The person or group submitting the examination shall demonstrate that the examination covers the same material and requires the same level of knowledge as the approved examinations.

Section 6. Appeal Procedure. (1) Applicants denied a license may appeal the decision to the Executive Director of the Office of Housing, Buildings and Construction. The applicant shall submit written notice of the appeal to the Office of Housing, Buildings and Construction within ten (10) days of receiving notice that the license application has been denied.

(2) The appeal shall be conducted pursuant to KRS Chapter 13B by a hearing officer appointed by the Executive Director of the Office of Housing, Buildings and Construction.

Section 7. Proof of Insurance. (1) Applicants for an electrical contractor's license shall provide proof of compliance with liability insurance requirements by providing an insurance certificate showing general liability insurance coverage of at least $500,000 issued by an insurer authorized to do business in Kentucky and naming the Office of Housing, Buildings and Construction, Electrical Licensing, as the certificate holder.

(2) The applicant shall provide proof of workers' compensation insurance by providing:

(a) An insurance certificate from an authorized Kentucky insurer or other workers' compensation coverage provider; or

(b) A notarized statement that the applicant is not required to obtain workers' compensation coverage and the reason why such coverage is not required.

(3) Electrical contractors shall require their liability and workers' compensation insurers to provide notice to the Office of Housing, Buildings and Construction if:

(a) A policy is cancelled, terminated, or not renewed; or

(b) The policy limits are lowered.

(4) Electrical contractors shall advise the Office of Housing, Buildings and Construction of any:

(a) Change in their insurance coverage, including cancellation or termination of any policy;

(b) Change in the insurer providing the coverage; or

(c) Changed circumstances which require the contractor to obtain coverage.

Section 8. Renewal Requirements. (1) Licenses shall be valid for one (1) year and shall be renewed on or before the last day of the licensee's birth month. For electrical contractor licenses issued to corporations, partnerships, or business entities without a birth month, the renewal month shall be the month the license was issued.

(2) The Office of Housing, Buildings and Construction may issue an initial license to an applicant for a period of up to twenty-three (23) months and may charge a pro rata initial license fee to reflect the actual term of the initial license.

(3) Licensee shall apply for renewal of their license(s) on Form SFM-EC-5.

Section 9. Inactive License Status. (1) A licensee may request a license be placed in inactive status. A licensee shall not perform any electrical work requiring a license if the license is inactive.

(2) An electrical contractor licensee in inactive status shall not be required to maintain liability insurance or provide proof to the Office of Housing, Buildings and Construction of compliance with workers' compensation laws.

(3) Certified electrical inspectors may be licensed as an electrical contractor, master electrician, or electrician, but shall maintain that license as inactive while having an active electrical inspector certification.

(4) Performing electrical work which requires a license while holding an inactive license shall be grounds for revocation or suspension of all electrical licenses and certifications held by the licensee.

Section 10. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) Form SFM-EC-2, "Electrical Contractor's License Application", (March, 2007 edition);

(b) Form SFM-EC-3, "Master Electrician's and Electrician's License Application", (March, 2007 edition);

(c) Form SFM-EC-4, "Reciprocity Electrical License Application," (March, 2007 edition); and

(d) Form SFM-EC-5, "Electrical License Renewal Application," {June, 2008 edition}[~~(March, 2007 edition)~~].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of Housing, Buildings and Construction, Electrical Licensing, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5405, Monday through Friday, 8 a.m. to 4:30 p.m.

RICHARD MOLONEY, Executive Director
LARRY R. BOND, Commissioner
HANK LIST, Deputy Secretary
For ROBERT D. VANCE, Secretary
APPROVED BY AGENCY: June 12, 2008
FILED WITH LRC: June 13, 2008 at 9 a.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on

July 24, at 1 p.m., EDT, in the Office of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by July 17, 2008 (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 July 31, 2008. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation by the above date to the contact person:

CONTACT PERSON: Dawn M. Bellis, General Counsel, Office of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5405, phone (502) 573-0394 Ext. 144, fax (502) 573-1057.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Dawn M. Bellis

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the procedures and requirements for the licensing of electrical contractors, electricians and master electricians under the provisions of KRS 227A.060.

(b) The necessity of this administrative regulation: This administrative regulation establishes the eligibility requirements and application procedures for the licensing of electrical contractors, electricians and master electricians for the issuance of licenses as required by KRS 227A.060.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation conforms to the statutes by establishing the standards and procedures that are to be followed for the licensing of electrical contractors, electricians and master electricians.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It sets forth the standards and procedures authorized by the statute in implementation of the requirements for licensing of electrical contractors, electricians and master electricians.

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

(a) How the amendment will change this existing administrative regulation: This amendment will update and clarify the Electrical License Renewal Application.

(b) The necessity of the amendment to this administrative regulation: The amendment eliminates some confusion dealing with the terminology used on the electrical license renewal application.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 227A.040 requires the Office to promulgate administrative regulations to create procedures governing the issuance of licenses to electrical contractors, master electricians and electricians, including the fees. This amendment satisfies those statutory obligations.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist the office by clarifying the language on the electrical license renewal application.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This will have no effect as the form is already being utilized and this amendment simply clarifies the language on the electrical license renewal application.

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

(a) List the actions that each of the regulated entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including: Licensed electricians will have clarification of the language utilized in the electrical licensing renewal application.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): None. Regulation clarifies existing language.

(c) As a result of compliance, what benefits will accrue to the entities identified in questions (3): Licensees will benefit by the language clarification on the electrical license renewal application.

(5) Provide an estimate of how much it will cost to implement this administrative regulation: None

(a) Initially: No cost to implement.

(b) On a continuing basis: No cost to implement.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Existing agency funds.

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

(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? Tiering is not applied because all licensees will utilize the updated electrical license renewal form.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Office of Housing, Buildings and Construction, Electrical Licensing Section.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. The statutory authority for this administrative regulation is found in KRS 227A.040(1), 227A.040(8), 227A.060 and 227A.100(9).

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulatory amendment will not generate revenue.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulatory amendment will not generate revenue. (c) How much will it cost to administer this program for the first year? There will be no additional cost as this administrative regulatory amendment simply clarifies language on the electrical license renewal forms.

(d) How much will it cost to administer this program for subsequent years? There will also be no additional cost to administer this program.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation.

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department of Public Protection
Office of Housing, Buildings and Construction
Division of Fire Prevention
(Amendment)

815 KAR 35:100. Electrical continuing education procedure.

RELATES TO: KRS 227A.040(8) and KRS 227A.100(7)
STATUTORY AUTHORITY: KRS 227A.040(8), 227A.100(7)
NECESSITY, FUNCTION AND CONFORMITY: KRS 227A.040(8) requires the Office of Housing, Buildings and Construction to promulgate administrative regulations to establish procedures for the governing of electrical licenses. KRS 227A.100(7) requires the office to promulgate an administrative regulation to establish requirements relating to continuing education, including requirements for providers. This administrative regulation establishes the continuing education procedures for master electricians, electricians, and electrical contractors.

Section 1. Proof of Continuing Education Requirements. Prior to license renewal, each licensee shall present proof of completion of at least six (6) hours of continuing education for each license held during the immediately-preceding twelve (12) months; and

(2) The proof shall be signed by the licensee and certified by the provider of the continuing education course on Form SFM-ECEC 1, Electrical License Renewal Proof of Continuing Education, or its electronic equivalent.

Section 2. Continuing Education Course Requirements. (1) Continuing education for master and electrician licensees shall relate to the National Electric Code (NFPA 70) or other electrical codes incorporated into the Kentucky Building Code or the Kentucky Residential Code or to safety practices and procedures. Only two (2) of the six (6) hours of continuing education required for electricians, master electricians and contractors may be safety practices and procedures.

(2) Continuing education for electrical contractors shall relate to business and employment law, business practices, and safety practices and procedures.

Section 3. Continuing Education Providers. (1) Continuing education shall be provided by one (1) of the organizations listed in KRS 227A.100(7) or by an individual or organization recommended by the Electrical Advisory Committee and approved by the Office of Housing, Buildings and Construction.

(2) An applicant for certification as a continuing education provider shall submit the following information to the Office of Housing, Buildings and Construction:

(a) Syllabus[~~Types~~] of courses to be offered;
(b) Times and dates that courses will be offered;
(c) Location where courses will be offered;
(d) Availability of courses to the general public;
(e) Fees to be charged for the courses;
(f) Identity and qualifications of teachers; and
(g) Attendance verification procedures.

(3) The Office of Housing, Buildings and Construction shall certify the applicant if it determines that:

(a) The applicant can reliably provide continuing education;

(b) The applicant will provide an accurate certification of attendance at all courses offered; and

(c) That all courses will be taught by persons with sufficient technical knowledge of the subject matter.

(4) Certification may be denied, suspended, or revoked if the Office of Housing, Buildings and Construction determines, after an opportunity to be heard pursuant [~~a hearing pursuant~~] to KRS Chapter 13B, that the individual or organization no longer meets the requirements of subsection (3) of this section.

(5) All continuing education providers shall notify the Office of Housing, Buildings and Construction of all courses to be offered at least thirty (30) days prior to the courses. The notice shall include the date, time, location and topic of the course and the fee to be charged, if any. The Office of Housing, Buildings and Construction shall maintain a list of all courses to be offered and make the list available to the public.

(6) For classes open to the public, continuing education providers shall not establish a minimum number of attendees required to hold a class.

(7) All providers shall notify the Office of Housing, Buildings and Construction, as well as those who have registered to attend, a minimum of one (1) week prior to the cancellation of any class. Minimum notification requirement will only be waived in cases where acts of God, including natural disasters or inclement weather preclude classes as scheduled.

(8) On written request by a licensee, the Office of Housing, Buildings and Construction may recognize for continuing education credit courses attended in another state if the material covered complies with Section 2 of this administrative regulation.

Section 4. Certified Electrical Inspectors. A certified electrical inspector holding an inactive master electrician or electrician license may apply six (6) hours of the continuing education required by 815 KAR 35.015, Section 8(1), to the required six (6) hours for a master electrician or electrician's license if the hours are not used to satisfy the continuing education requirement for electrical contractors.

Section 5. Inactive License. Prior to activating an inactive license, the license holder shall provide proof that the license holder has completed six (6) hours of continuing education for each year the license has been inactive. At least six (6) hours of the continuing education shall have been completed in the twelve (12) months prior to activating the license.

Section 6. Incorporation by Reference. (1) Form SFM-ECEC-1, Electrical License Renewal Proof of Continuing Education, March 2005, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, at the Office of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5404, Monday through Friday, 8 a.m. to 4:30 p.m.

RICHARD MOLONEY, Executive Director
LARRY R. BOND, Commissioner
HANK LIST, Deputy Secretary
For ROBERT D. VANCE, Secretary
APPROVED BY AGENCY: June 12, 2008
FILED WITH LRC: June 13, 2008 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 24, at 1 p.m., EDT, in the Office of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by July 17, 2008 (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 July 31, 2008. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation by the above date to the contact person:

CONTACT PERSON: Dawn M. Bellis, General Counsel, Office of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5405, phone (502) 573-0394 ext. 144, fax (502) 573-1057.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Dawn M. Bellis

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the continuing education procedures for

master electricians, electricians, electrical contractors and continuing education providers.

(b) The necessity of this administrative regulation: KRS 227A.040(8) requires the office to promulgate administrative regulations to establish procedures for the governing of electrical licenses. KRS 227A.100(7) requires the Office to promulgate an administrative regulation to establish requirements relating to continuing education, including requirements for continuing education providers.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 227A 040(8) requires the office to promulgate administrative regulations to establish procedures for the governing of electrical licenses; KRS 227A.100(7) requires the Office to promulgate an administrative regulation to establish requirements relating to continuing education, including requirements for continuing education providers.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation sets forth the requirements for continuing education of electricians as governed by KRS 227A.100(7) and sets forth requirements for those who wish to provide continuing education to electricians, as recommended by the Electrical Advisory Committee and approved by the Office of Housing, Buildings and Construction.

(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 specifies that only two of the six required of continuing education hours may be safety practices and procedures. This amendment outlines the disciplinary standards for continuing education providers.

(b) The necessity of the amendment to this administrative regulation: This amendment sets forth requirements and standards of continuing education providers as recommended by the Electrical Advisory Committee and approved by the Office of Housing, Buildings and Construction.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 227A.100(7) sets the requirements for continuing education and also allows the Office of Housing, Buildings and Construction to establish the content of continuing education classes, as well as qualifications for continuing education providers.

(d) How the amendment will assist in the effective administration of the statutes: This amendment specifies the requirements and standards for continuing education providers that are required by KRS 227A.100(7).

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects only licensed electricians, master electricians, electrical contractors and certified continuing education providers.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The identified entities will continue to complete continuing education requirements and be certified as continuing education providers.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This amendment does not increase costs the entities identified.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This amendment clarifies requirements and procedures for the entities identified.

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

(a) Initially: There is no initial cost to implement this administrative regulation or its amendment.

(b) On a continuing basis: There is no continuing cost associated with this administrative regulation or its amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Funding for implementation and enforcement of this administrative regulation is provided by agency funds through the Office of Housing, Buildings and Construction.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No fees are established or increased.

(9) TIERING: Is tiering applied? (Explain why tiering was or was not used.) Tiering is not applied in this case. All licensed electricians, master electricians, contractors and continuing education providers are being treated equally under this regulation.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Office of Housing, Buildings and Construction, Electrical Licensing Section, will be impacted by this administrative regulation.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 227A 040(8) and 227A.100(7).

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. This administrative regulation will have no impact on expenditures or revenues.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will not generate revenue in the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will not generate revenue in subsequent years.

(c) How much will it cost to administer this program for the first year? There will be no cost, as this administrative regulation simply addresses continuing education requirements for all types of electricians, as well as the continuing education providers.

(d) How much will it cost to administer this program for subsequent years? There will be no cost to administer this program in subsequent years.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation: There is no cost associated with this amendment.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Division of Hospital and Provider Operations
(Amendment)

907 KAR 1:015. Payments for <u>outpatient</u> hospital ~~[outpatient]~~ services.

RELATES TO: KRS 205.520, <u>216.380,</u> 42 C.F.R. 440.2, 440.20(a), <u>447.321, 42 U.S.C. 1395l(h)</u>

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), 205.560, 205.637, 42 U.S.C. 1396a, 1396b, 1396d, EO 2004-726

NECESSITY, FUNCTION, AND CONFORMITY: EO 2004-726, effective July 9, 2004, reorganized the Cabinet for Health <u>and</u>

Family Services and placed the Department for Medicaid Services and the Medicaid Program under the Cabinet for Health and Family Services. The Cabinet for Health and Family Services, Department for Medicaid Services, has the 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 citizenry. This administrative regulation establishes the method for determining amounts payable by the Medicaid Program for outpatient hospital [~~outpatient~~] services.

Section 1. Definitions. (1) "Critical access hospital" or "CAH" means a hospital meeting the licensure requirements established in 906 KAR 1:110 and KRS 216.380.

(2) "Department" means the Department for Medicaid Services or its designee.

(3) "Finalized" means approved or final as determined by the Centers for Medicare and Medicaid Services (CMS).

(4) "Outpatient cost-to-charge ratio" means the ratio determined by dividing the costs reported on Supplemental Worksheet E-3, Part III, Page 12, column 2, line 27 of the cost report by the charges reported on column 2, line 20 of the same schedule.

Section 2. In-State Outpatient Hospital Service Reimbursement. (1)(a) Except for critical access hospital services and outpatient hospital laboratory services, the department shall reimburse on an interim basis for in-state outpatient hospital services at a facility specific outpatient cost-to-charge ratio based on the facility's most recently filed cost report.

(b) An outpatient cost-to-charge ratio shall be expressed as a percent of the hospital's charges.

(2) A facility specific outpatient cost-to-charge ratio paid during the course of a hospital's fiscal year shall be designed to result in reimbursement, at the hospital's fiscal year end, equaling ninety (90) percent of a facility's total outpatient costs incurred during the hospital's fiscal year.

(3) Except as established in subsection (4) of this section:

(a) Upon approving an in-state outpatient hospital's as submitted cost report for the hospital's fiscal year, the department shall preliminarily settle reimbursement to the facility equal to ninety (90) percent of the facility's total outpatient costs incurred in the corresponding fiscal year; and

(b) Upon receiving an in-state outpatient hospital's finalized cost report for the hospital's fiscal year, the department shall settle final reimbursement to the facility equal to ninety (90) percent of the facility's total outpatient costs incurred in the corresponding fiscal year.

(4)(a) Under no circumstances shall the department's total reimbursement for outpatient hospital services exceed the aggregate limit established in 42 C.F.R. 447.321.

(b) If projections indicate for a given state fiscal year that reimbursing for outpatient hospital services at ninety (90) percent of costs would result in the department's total outpatient hospital service reimbursement exceeding the aggregate limit established in 42 C.F.R. 447.321, the department shall proportionately reduce final outpatient hospital service reimbursement for each hospital to equal a percent of costs which shall result in total outpatient hospital reimbursement equaling the aggregate limit established in 42 C.F.R. 447.321.

Section 3. Out-of-State Outpatient Hospital Service Reimbursement. Excluding services provided in a critical access hospital, reimbursement for an outpatient hospital service provided by an out-of-state hospital shall be ninety (90) percent of the average in-state outpatient hospital cost-to-charge ratio.

Section 4. Critical Access Hospital Outpatient Service Reimbursement. (1) The department shall reimburse for outpatient hospital services in a critical access hospital as established in 42 C.F.R. 413.70(b) through (d).

(2) A critical access hospital shall comply with the cost reporting requirements established in Section 3 of this administrative regulation.

Section 5. Outpatient Hospital Laboratory Service Reimbursement. The department shall reimburse for an in-state or out-of-state outpatient hospital laboratory service:

(1) A rate equal to sixty-two (62) percent of the Medicare fee schedule rate if a Medicare rate exists for the service; or

(2) By multiplying the facility's current outpatient cost-to-charge ratio by its billed charges if no Medicare rate exists for the service.

Section 6. Cost Reporting Requirements. (1) An in-state outpatient hospital participating in the Medicaid program shall submit to the department a copy of the Medicare cost report it submits to CMS, an electronic cost report file (ECR), the Supplemental Medicaid Schedule KMAP-1 and the Supplemental Medicaid Schedule KMAP-4 as follows:

(a) A cost report shall be submitted:

1. For the fiscal year used by the hospital; and

2. Within five (5) months after the close of the hospital's fiscal year; and

(b) Except as follows, the department shall not grant a cost report submittal extension:

1. The department shall grant an extension if an extension has been granted by Medicare. If an extension has been granted by Medicare, when the facility submits its cost report to Medicare it shall simultaneously submit a copy of the cost report to the department; or

2. If a catastrophic circumstance exists, as determined by the department (for example flood, fire, or other equivalent occurrence), the department shall grant a thirty (30) day extension.

(2) If a cost report submittal date lapses and no extension has been granted, the department shall immediately suspend all payment to the hospital until a complete cost report is received.

(3) If a cost report indicates payment is due, a provider shall submit the amount due or submit a payment plan request with the cost report.

(4) If a cost report indicates a payment is due and a hospital fails to remit the amount due or request a payment plan, the department shall suspend future payment to the hospital until the hospital remits the payment or submits a request for a payment plan.

(5) An estimated payment shall not be considered payment-in-full until a final determination of cost has been made by the department.

(6) A cost report submitted by a hospital to the department shall be subject to departmental audit and review.

(7) Within seventy (70) days of receipt from the Medicare intermediary, a hospital shall submit to the department a printed copy of the final Medicare-audited cost report including adjustments.

(8)(a) If it is determined that an additional payment is due after a final determination of cost has been made by the department, the additional payment shall be due sixty (60) days after notification.

(b) If a hospital does not submit the additional payment within sixty (60) days, the department shall withhold future payment to the hospital until the department has collected in full the amount owed by the hospital to the department.

Section 7. Appeals. A hospital may appeal a decision by the department regarding the application of this administration regulation in accordance with 907 KAR 1:671.

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

(a) "Supplemental Worksheet E-3, Part III, Page 12, May 2004 edition";

(b) "Supplemental Medicaid Schedule KMAP-1", May 2004 edition; and

(c) "Supplemental Medicaid Schedule KMAP-4", May 2004 edition.

(2) The material listed in subsection (1) of this section may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky 40601, Monday through Friday 8 a.m. to 4:30 p.m.

[~~(2) "Current procedural terminology code" or "CPT code"~~

means a code used for the reporting of medical services or procedures using the current procedural terminology developed by the American Medical Association.

(3) "Department" means the Department for Medicaid Services or its designee.

(4) "Healthcare common procedure coding system" or "HCPCS" means a collection of codes acknowledged by the Centers for Medicare and Medicaid Services that represent procedures.

(5) "Level 1 service" means services billed using CPT code 99281.

(6) "Level 2 service" means services billed using CPT codes 99282 or 99283.

(7) "Level 3 service" means services billed using CPT codes 99284, 99285, 99291, or 99292.

(8) "Outpatient cost-to-charge ratio" means the ratio determined by dividing the costs reported on Supplemental Worksheet E-3, Part III, Page 12 column 3, line 27 of the cost report by the charges reported on column 3, line 20 of the same schedule.

(9) "Revenue code" means a provider-assigned revenue code for each cost center for which a separate charge is billed.

(10) "Triage" means a medical screening and assessment billed using revenue code 451.

Section 2. Outpatient Hospital Services. (1) Except for a critical access hospital, for services provided on or after August 4, 2003, the Department for Medicaid Services shall reimburse a participating in-state hospital for outpatient services in accordance with this subsection.

(a) For the following procedures, the rates shall be as follows:

1. Cardiac catheterization lab:

a. Unilateral - $1,478, or

b. Bilateral - $1,770;

2. Computed tomography scan - $479;

3. Lithotripsy - $3,737;

4. Magnetic resonance imaging - $593;

5. Observation room - $458; and

6. Ultrasound - $177.

(b) If multiple services listed in paragraph (a) of this subsection are provided, each service shall receive the corresponding rate established in paragraph (a) of this subsection.

(c) The department shall utilize the 1996 Medicare ambulatory surgical center groups to reimburse for an outpatient surgery. The following chart establishes the reimbursement rate for each corresponding surgical group:

Ambulatory Surgical Center Group	Reimbursement Rate
Group 1	$397
Group 2	$534
Group 3	$610
Group 4	$753
Group 5	$858
Group 6	$1,016
Group 7	$1,191
Group 8	$1,191

(d) Reimbursement for an outpatient surgery which does not have a surgical group rate shall be at a facility-specific outpatient cost-to-charge ratio.

(e) For multiple surgeries provided to the same recipient on the same day, only the surgery with the highest reimbursement rate established in paragraph (c) of this subsection, shall be paid.

(f) Except for the services listed in paragraph (g) of this subsection, all other services provided to the same recipient on the same day shall be reimbursed in accordance with paragraphs (a), (b), (c), (d), and (e) of this subsection.

(g) The following shall be reimbursed on an interim basis at a facility-specific outpatient cost-to-charge ratio for the following revenue codes:

Service	Revenue Code
Pharmacy	250, 251, 252, 254, 255, 258, 260, 261, 634, 635, 636
X-ray	320, 321, 322, 323, 324, 342, 400, 403, 920
Supplies	270, 271, 272, 274, 275, 621, 622, 623
EKG/ECG and Therapeutic Services	410, 412, 413, 420, 421, 422, 423, 424, 440, 441, 442, 443, 460, 470, 471, 472, 480, 482, 510, 512, 516, 517, 730, 731, 732, 740, 901, 922, 940, 942, 943
Room and Miscellaneous	280, 290, 370, 371, 372, 374, 700, 710, 750, 761, 890, 891, 892, 893, 921
Dialysis	821, 831, 841
Chemotherapy	330, 331, 332, 333, 334, 335

(h) Services reimbursed in accordance with paragraph (g) of this subsection shall be settled to cost at year end.

(2) Except for pharmacy services billed using revenue codes 250, 251, 252, 254, 255, 258, 260, 261, 634, 634, or 636, medical or surgical supplies billed using revenue codes 270-275, and triage billed using revenue code 451, a hospital shall include all applicable CPT and HCPCS codes on a claim.

(3) Except for services listed in subsection (1)(g) of this section, beginning August 4, 2003, an out-of-state hospital providing outpatient services shall be reimbursed in accordance with subsection (1) of this section.

(4) Services listed in subsection (1)(g) of this section provided by an out-of-state hospital shall be reimbursed by multiplying the average outpatient cost-to-charge ratio of in-state hospitals, excluding critical access hospitals, by billed charges.

(5)(a) An outpatient hospital laboratory service shall be reimbursed at the Medicare-established technical component rate in accordance with 907 KAR 1:029.

(b) An outpatient hospital laboratory service with no established Medicare rate shall be reimbursed by multiplying a facility-specific outpatient cost-to-charge ratio by billed charges.

(6) A critical access hospital shall be reimbursed on an interim basis:

(a) By multiplying charges by the lesser of:

1. The Medicare cost-to-charge ratio issued by the Medicare fiscal intermediary in effect at the time; or

2. The Medicaid outpatient cost-to-charge ratio;

(b) For a laboratory service in accordance with the Medicare fee schedule; and

(c) With a settlement to cost at the end of the year.

(7) A hospital providing outpatient services shall be required to submit a cost report within five (5) months after a hospital's fiscal year end.

(8) Failure to provide a cost report within the timeframe established in subsection (7) of this section shall result in a suspension of future payment until the cost report is received by the department.

(9) If a cost report indicates payment is due, a provider shall remit payment in full or a request for a payment plan with the cost report.

(10) If a cost report indicates a payment is due and a hospital fails to remit a payment or request for a payment plan, the department shall suspend future payment to the hospital.

(11) An estimated payment shall not be considered payment in full until a final determination of cost has been made by the department.

(12) If it is determined that an additional payment is due after a final determination of cost has been made by the department, the additional payment shall be due sixty (60) days after notification.

(13) If a hospital fails to submit an additional payment in accordance with subsection (12) of this section, the department shall suspend future payment to the hospital.

Section 3. Supplemental Payments. (1) In addition to a payment received in accordance with Section 2 of this administrative regulation, a nonstate government hospital, as defined in 42 C.F.R.

~~447.321(2), whose county has entered into an intergovernmental agreement with the Commonwealth shall receive a quarterly supplemental payment in an amount equal to the difference between the payments made in accordance with Sections 2 and 4 of this administrative regulation and the maximum amount allowable under 42 C.F.R. 447.321.~~

~~(2) A payment made under this section shall:~~

~~(a) Not be subject to the cost settlement provisions established in Section 2 of this administrative regulation; and~~

~~(b) Apply to a service provided on or after April 2, 2001.~~

~~Section 4. In-state and Out-of-state Emergency Room Services. (1) Services provided in an emergency room shall be reimbursed as follows:~~

~~(a) The triage service reimbursement rate shall be twenty (20) dollars;~~

~~(b) The level 1 service reimbursement rate shall be eighty-two (82) dollars;~~

~~(c) The level 2 service reimbursement rate shall be $164; and~~

~~(d) The level 3 service reimbursement rate shall be $264.~~

~~(2) In addition to the rate paid for services listed in subsection (1) of this section, the following shall be paid at the following rates:~~

~~(a) Cardiac catheterization lab:~~

~~1. Unilateral - $1,478; or~~

~~2. Bilateral - $1,770;~~

~~(b) Computed tomography scan - $479;~~

~~(c) Lithotripsy - $3,737;~~

~~(d) Magnetic resonance imaging - $583;~~

~~(e) Observation room - $458; and~~

~~(f) Ultrasound - $177.~~

~~(3) If multiple services listed in subsection (2) of this section are provided, each service shall receive the corresponding rate established in subsection (2) of this section.~~

~~(4) Except as listed in subsection (5) of this section, a separate payment shall not be made for the services or supplies listed in Section 2(1)(g) of this administrative regulation.~~

~~(5) A thrombolytic agent shall be reimbursed at the hospital's acquisition cost.~~

~~(6) A service provided in an emergency room of a critical access hospital shall be reimbursed in accordance with Section 2(6) of this administrative regulation.~~

~~Section 5. Appeals. A hospital may appeal a decision as permitted by 907 KAR 1:671.~~

~~Section 6. Incorporation by Reference. (1) "Supplemental Worksheet E-3, Part III, Page 12, November 1992 edition" is incorporated by reference.~~

~~(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 40601, Monday through Friday, 8 a.m. to 4:30 p.m.]~~

ELIZABETH A JOHNSON, Commissioner
JANIE MILLER, Secretary
APPROVED BY AGENCY: June 11, 2008
FILED WITH LRC: June 12, 2008 at 1 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD. A public hearing on this administrative regulation shall, if requested, be held on July 21, 2008 at 9 a.m. in the Cabinet for Health and Family Services, Office of the Ombudsman's Conference Room Located on the First Floor at 1E-B; 275 East Main Street; Frankfort, Kentucky; 40621. Individuals interested in attending this hearing shall notify this agency in writing by July 14, 2008, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. You may submit written comments regarding this proposed administrative regulation until close of business July 31, 2008. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Jill Brown, Office of Legal Services, 275 East Main Street 5W-B, Frankfort, Kentucky 40601, phone (502) 564-7905, fax (502) 564-7573.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Darlene Burgess

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the reimbursement methodology for outpatient hospital services.

(b) The necessity of this administrative regulation: This administrative regulation is necessary in order to reimburse hospitals for the provision of outpatient services.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The authorizing statutes of this administrative regulation grant the Department for Medicaid Services (DMS) the authority to reimburse hospitals for the provision of outpatient services.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes the reimbursement methodology for outpatient hospital services.

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

(a) How the amendment will change this existing administrative regulation: The department is amending reimbursement by eliminating flat rates for emergency room care and ambulatory surgical center care reimbursement as ambulatory surgical care reimbursement is addressed in 907 KAR 1:008. DMS is implementing a cost-based reimbursement which will consist of a facility-specific cost to charge ratio on an interim basis followed by a preliminary settlement and a final settlement equal to ninety (90) percent of a facility's costs. Additionally, reimbursement shall not exceed the limit established in 42 C.F.R. 447.321. Outpatient services in a critical access hospital will continue to be reimbursed as mandated in federal regulation.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to replace the existing diverse and complex reimbursement methodology with a facility-specific reimbursement model equal to ninety (90) percent of a facility's costs after final settlement. Additionally, the amendment deletes ambulatory surgical center reimbursement provisions as those are established in 907 KAR 1.008.

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing a facility-specific reimbursement resulting in a final settlement equal to ninety (90) percent of a facility's cost. Additionally, the amendment conforms to the authorizing statutes by eliminating ambulatory surgical center reimbursement provisions as they are established in 907 KAR 1:008.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the authorizing statues by establishing a facility specific reimbursement methodology resulting in a final settlement equal to ninety (90) percent of a facility's costs. Additionally, the amendment will assist in the effective administration of the authorizing statutes by eliminating ambulatory surgical center reimbursement provisions as those provisions are established in 907 KAR 1:008.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: This administrative regulation will affect all hospitals providing outpatient services.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Outpatient facilities will continue to have

to submit cost reports; however, the cost report will now be the primary basis for their reimbursement.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This amendment does not impose a cost on regulated entities.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Outpatient facilities should benefit by receiving an interim reimbursement more closely coinciding with ninety (90) percent of their actual costs which in turn should result in less money owed or due at final cost settlement.

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

(a) Initially: DMS projects that the amendment will be budget neutral.

(b) On a continuing basis: DMS projects that the amendment will be budget neutral.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Sources of funding to be used for the implementation and enforcement of this administrative regulation are federal funds authorized under Title XIX and Title XXI of the Social Security Act, and state matching funds of general and agency appropriations.

(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 amendment does not establish any fees, nor does it 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 amendment does not establish or increase any fees.

(9) Tiering: Is tiering applied? Critical access outpatient hospital reimbursement differs from other outpatient hospital reimbursement as critical access hospital reimbursement is established in federal regulation.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? All hospitals providing outpatient hospital services including the county and state owned are affected by this amendment.

3. Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 205.520, KRS 194A 030, 194A.050, 205.560, 205.637, 42 U.S C. 1396a, 1396b, 1396d, 42 C.F.R. 440.20, 42 C.F.R. 447.321.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This amendment will not generate any additional revenue for state or local governments during the first year of implementation.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This amendment will not generate any additional revenue for state or local governments during subsequent years of implementation.

(c) How much will it cost to administer this program for the first year? DMS projects that the amendment will be budget neutral.

(d) How much will it cost to administer this program for subsequent years? DMS projects that the amendment will be budget neutral.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation: No additional expenditures are necessary to implement this amendment.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate.
42 C.F.R. 440.20 and 42 C.F.R. 447.321 address outpatient hospital reimbursement provisions.

2. State compliance standards. KRS 205.520 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 citizenry. KRS 205.560 addresses Medicaid reimbursement. KRS 205.637 addresses Medicaid reimbursement to county-owned and operated hospitals.

3. Minimum or uniform standards contained in the federal mandate. 42 U.S.C. 1396a(30)(A) requires a state to "provide such methods and procedures relating to the utilization of, and the payment for, care and services available under the plan (including but not limited to utilization review plans as provided for in section 1396b(i)(4) of this title) as may be necessary to safeguard against unnecessary utilization of such care and services and to assure that payments are consistent with efficiency, economy, and quality of care and are sufficient to enlist enough providers so that care and services are available under the plan at least to the extent that such care and services are available to the general population in the geographic area." Additionally, 42 C.F.R. 447.321 establishes the upper payment limit for outpatient hospital reimbursement.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This amendment does not impose stricter requirements than the federal requirements.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This amendment does not impose stricter requirements than the federal requirements.

TOURISM, ARTS, AND HERITAGE CABINET
Kentucky Heritage Council
(New Administrative Regulation)

300 KAR 6:020. Administration of Kentucky Rock Fence Preservation Program.

RELATES TO: KRS 45A, 61.805 - 61.850, 61.870 - 61 884, 171.391, 171.392, 171.393, 424

STATUTORY AUTHORITY: KRS 171.381(3)(f), 171.393

NECESSITY, FUNCTION, AND CONFORMITY: KRS 171.391 to 171.393 authorize the Kentucky Heritage Council, in consultation with the Dry Stone Conservancy, to promulgate administrative regulations governing administration of the Kentucky Rock Fence Preservation Program. To enable the Kentucky Heritage Council to fulfill its goal of protection of all meaningful vestiges of Kentucky's heritage for future generations, the Rock Fence Preservation Program provides grants and technical assistance to persons engaged in reconstruction or restoration of historic drylaid rock fences and historic mortared rock fences located in Kentucky. This administrative regulation establishes criteria for participation in that grant program.

Section 1. Definitions. (1) "Applicant" means a person who applies for grant assistance from the Kentucky Rock Fence Preservation Program.

(2) "Application" means the form Kentucky Rock Fence Preservation Grant Application. (3) "Available grant funds" means money deposited in the rock fence preservation fund disbursed by the State Treasury under the Rock Fence Preservation Program established in KRS 171.393 and administered by the Kentucky Heritage Council for reconstruction and restoration of the Commonwealth's historic drylaid rock fences and historic mortared rock fences.

(4) "Council" is defined by KRS 171.391(1). (5) "Director" means the Executive Director of the Kentucky Heritage Council.

(6) "Eligible owner" means an owner deemed to be eligible under Section 2 of this administrative regulation to apply for grant assistance

(7) "Eligible plan" means a reconstruction or restoration plan that meets the standards for reconstruction or restoration and has been approved by the director pursuant to Section 6 of this administrative regulation.

(8) "File" or "filed" means received at the office of the council or post-marked on or before the announced deadline.

(9) "Grant assistance" means grant funds awarded by the council from the Kentucky Rock Fence Preservation Program Grant Fund.

(10) "Historic drylaid rock fence" is defined by KRS 171.391(2).

(11) "Historic mortared rock fence" is defined by KRS 171.391(3).

(12) "Owner" means the person, partnership, corporation, public agency, or other entity holding a fee simple interest in property located in Kentucky. A lessee of property is considered the owner of the property if the remaining term of the lease is not less than twenty-seven and one-half (27 1/2) years for residential property and thirty-nine (39) years for all other property.

(13) "Performance and maintenance agreement" means the form Kentucky Rock Fence Preservation Performance and Maintenance Agreement, a written agreement between an eligible owner and the council in which the eligible owner agrees to implement an eligible plan for which the grant assistance is being awarded and to maintain the historic drylaid rock fences and historic mortared rock fences in their restored condition for a period of time established in Section 9(3)(b) of this administrative regulation from the date of the agreement.

(14) "Program year" means the period from July 1 to June 30.

(15) "Property" means real property located in Kentucky upon which historic drylaid rock fences and historic mortared rock fences are situated.

(16) "Reconstruction" means the act or process of depicting, by means of new construction, the form, features, and detailing of a nonsurviving site, landscape, building, structure, or object for the purpose of replicating its appearance at a specific period of time and in its historic location.

(17) "Reconstruction plan" means a plan describing the methods and materials, including location and condition of existing fences, to be utilized by persons engaged in the reconstruction of historic drylaid rock fences and historic mortared rock fences located in Kentucky.

(18) "Request for reimbursement" means the form Kentucky Rock Fence Preservation Grant Request for Reimbursement.

(19) "Restoration" means the process of accurately depicting the form, features, and character of historic drylaid rock fences and historic mortared rock fences as they appeared at a particular period of time by means of reconstruction of missing features for the restoration period and the removal of features from other periods in its history. Contemporary alterations and additions are not planned, and substantial physical and documentary evidence exists for the work.

(20) "Restoration plan" means a plan describing the methods and materials, including location and condition of existing fences, to be utilized by persons engaged in the restoration of historic drylaid rock fences and historic mortared rock fences located in Kentucky.

(21) "Standards for reconstruction" means the Secretary of the Interior's Standards for Reconstruction, 36 C.F.R. 68 3(d), as established by the U. S. Department of Interior.

(22) "Standards for restoration" means the Secretary of the Interior's Standards for Restoration, 36 C.F.R. 68.3(c), as established by the U. S. Department of Interior.

Section 2. Eligible Owners. Owners of real property in Kentucky upon which historic drylaid rock fences and historic mortared rock fences are situated shall be eligible if they meet the following:

(1) The historic drylaid rock fences and historic mortared rock fences are in need of reconstruction or restoration, through no deliberate act by the owner, and still possess enough historic integrity to enable a determination of location, style, and dimensions;

(2) A reconstruction or restoration plan has been prepared that conforms to the standards for reconstruction or restoration; and

(3) The owner agrees to enter into a performance and maintenance agreement with the council.

Section 3. Standards for Reconstruction and Restoration. (1)(a) The standards for reconstruction and restoration shall be the criteria used to determine if the reconstruction or restoration qualifies as an eligible plan.

(b) The standards promote the protection, retention, maintenance, and long-term preservation of a property's historic drylaid rock fences and historic mortared rock fences in Kentucky.

(c) In addition to the standards of restoration set forth in subsection 3(2) of this section and standards of reconstruction set forth in subsection (3) of this section, historic drylaid rock fence shall be restored or reconstructed if feasible following the plan specifications set forth in the Special Note for Drylaid Rock Fences, KHC Form RFPP-4.

(2) Restoration standards provide that if existing conditions of the fences warrant more extensive work, repair is recommended with the surviving stones.

(a) If the level of damage or deterioration precludes repair, replacement shall be with stones that match the surviving portions of the fences in form, size, and color utilizing the same styles and construction techniques.

(b) A restoration plan for historic drylaid rock fences and historic mortared rock fences shall meet the following standards for restoration:

1. A property shall be used as it was historically or be given a new use that interprets the property and its restoration period;

2. Materials and features from the restoration period shall be retained and preserved. The removal of materials or alteration of features, spaces, and spatial relationships that characterize the period shall not be undertaken;

3. Each property shall be recognized as a physical record of its time, place, and use. Work needed to stabilize, consolidate, and conserve materials and features from the restoration period shall

be physically and visually compatible, identifiable upon close inspection, and properly documented for future research;

4. Materials, features, spaces, and finishes that characterize other historical periods shall be documented prior to their alteration or removal;

5. Distinctive materials, features, finishes, and construction techniques or examples of craftsmanship that characterize the restoration period shall be preserved;

6. Deteriorated features from the restoration period shall be repaired rather than replaced. If the severity of deterioration requires replacement of a distinctive feature, the new feature shall match the old in design, color, texture and, if possible, materials;

7. Replacement of missing features from the restoration period shall be substantiated by documentary and physical evidence. A false sense of history shall not be created by adding conjectural features, features from other properties, or by combining features that never existed together historically;

8.a. Chemical or physical treatments, if appropriate, shall be undertaken using the gentlest means possible.

b. Treatments that cause damage to historic materials shall not be used;

9. a. Archeological resources affected by a project shall be protected and preserved in place; or

b. if resources are required to be disturbed, data recovery measures shall be undertaken; and

10. Designs that were never executed historically shall not be constructed.

(3) Reconstruction standards establish a framework for recreating vanished or non-surviving fences with new materials, primarily for interpretive purposes. A reconstruction plan for historic drylaid rock fences and historic mortared rock fences shall meet the following standards for reconstruction:

(a) Reconstruction shall be used to depict vanished or nonsurviving portions of a property if documentary and physical evidence is available to permit accurate reconstruction with minimal conjecture and such reconstruction is essential to the public understanding of the property;

(b) Reconstruction of a landscape, building, structure, or object in its historic location shall be preceded by a thorough archeological investigation to identify and evaluate those features and artifacts that are essential to an accurate reconstruction. If such resources are disturbed, mitigation measures shall be undertaken;

(c) Reconstruction shall include measures to preserve any remaining historic materials, features, and spatial relationships;

(d)1. Reconstruction shall be based on the accurate duplication of historic features and elements substantiated by documentary or physical evidence rather than on conjectural designs or the availability of different features from other historic properties.

2. A reconstructed property shall recreate the appearance of the nonsurviving historic property in materials, design, color, and texture;

(e) A reconstruction shall be clearly identified as a contemporary recreation; and

(f) Designs that were never executed historically shall not be constructed.

(4) The quality of materials, craftsmanship, and related new construction in reconstruction or restoration shall match the quality of materials, craftsmanship, and design of the historic fence in question.

(a)1. Certain treatments, if improperly applied, or certain materials by their physical properties, may cause or accelerate physical deterioration of historic fences, and use of these treatments or materials shall result in denial of the application.

2. The burden is upon the owner to consult with the council for a determination as to what measures are appropriate.

(b) Inappropriate measures include:

1. Improper masonry repointing materials and techniques;

2. Improper exterior masonry cleaning methods;

3. Inappropriate patching, splicing, or other reinforcing methods or materials;

4. Utilization of materials or design which are incompatible with surviving portions of the fence; and

5. Utilization of stones that have been removed, harvested, or taken from other historic stone structures without prior approval of the council.

(5) In certain cases such as prior inappropriate repairs, it may be necessary to completely dismantle and rebuild portions of a historic drylaid rock fence or historic mortared rock fence to stabilize and repair weakened structural members. In these cases, the council shall consider this intervention as part of the reconstruction or restoration plan if:

(a) The necessity for dismantling is supported by documentation;

(b) The plan shall involve the least degree of intervention necessary to accomplish the reconstruction or restoration; and

(c) Adequate surviving stones shall be retained to maintain the architectural and historic integrity of the fence overall.

Section 4. Solicitation of Applications. (1) Within ninety (90) days from the date grant funds are made available in each program year, the council shall establish a deadline for filing of applications for grant assistance.

(2) An eligible owner shall be permitted to file only one (1) application per program year.

(3) The council shall provide an opportunity for eligible owners to file applications in time for the next program year by announcing available grant funds to appropriate news media, including local newspapers, providing notices to local historic preservation programs and groups, and by publishing notices on certain state and nonprofit Web sites.

Section 5. Contents and Completion of Applications. (1) Contents of application. An eligible owner shall file with the council the Kentucky Rock Fence Preservation Grant Application, KHC Form RFPP-1, in order to apply for grant assistance. The following information shall be provided:

(a) Names and mailing addresses of owners;

(b) Address of property;

(c) Photographic documentation of the fences showing areas to be recreated or restored and areas that do not need reconstruction or restoration, but supply sufficient information as to the styles and techniques used in construction of the fences and features unique to the fences;

(d) A brief written description of appearance including method of construction, materials, size, alterations, distinctive features and spaces, and dates of construction;

(e) A brief statement of significance summarizing how the fences reflect the value that gives the property its distinctive historical and visual character and explaining any significance attached to the property itself;

(f) A copy of a map, plat, or a PVA aerial map, indicating where the subject property is located and denoting where the fences are located on the property;

(g) A reconstruction or restoration plan that conforms to the standards reconstruction or for restoration;

(h) Estimates for total cost of the reconstruction or restoration along with qualifications of contractors solicited to perform the reconstruction or restoration;

(i) Indication of willingness to enter into a performance and maintenance agreement with the council; and

(j) Signature of the owner.

(2) Completion of an application.

(a) An eligible owner who does not have a reconstruction or restoration plan may request technical assistance from the council.

(b) If the reconstruction or restoration plan has been submitted, the application shall be reviewed in accordance with the eligibility and prioritization criteria established by this administrative regulation.

Section 6. Review of Applications. (1) The director shall review all applications that have been submitted to the council by the established deadline.

(2) The director shall invite comments on the applications from other entities such as the Dry Stone Conservancy, Certified Local Governments, and the Kentucky Department of Transportation.

(3) The director shall determine if the applicant is an eligible owner, if the reconstruction or restoration plan is an eligible plan, and if the application has been completed in accordance with the requirements of this administrative regulation.

(4) The director shall make a list of all applications that have been determined to be eligible, and shall submit the list to the council.

Section 7. Prioritization of Applications. The council shall prioritize applications determined to be eligible by the director based on the following criteria:

(1) Correct completion and submission of all parts of the application;

(2) Applicant is determined to be an eligible owner;

(3) Application contains reconstruction or restoration plans for historic drylaid rock fences and historic mortared rock fences that meet the standards for reconstruction or restoration as set forth in Section 3 of this administrative regulation.

(4) Application establishes a project consistent with the mission of long-term preservation and maintenance of historic drylaid rock fences and historic mortared rock fences in Kentucky;

(5) Applicant agrees to comply with the regulations in the administration of the reconstruction or restoration project as set forth in Section 3 of this administrative regulation;

(6) Clear identification and documentation of need;

(7) Clearly stated project objectives that can be achieved within the project term and are
feasible in light of projected resources available without impacting other historic stone structures;

(8) Sound project planning as evidenced in the narrative descriptions and proposed budget that supports the activities of the project, is reasonable and adequate to achieve the objectives, is cost-effective, and substantiates availability of matching funds;

(9) A clear description of the scope of work, methodology, time frame, anticipated product, and qualifications of proposed contractors;

(10) Performance on past state or federal grant projects funded by the Kentucky Heritage Council, the African American Heritage Commission, or the Native American Heritage Commission, as measured by adherence to all contractual requirements, both fiscal and programmatic;

(11) Potential for duplication of efforts by other organizations or individuals;

(12) Location of the fences in relation to the public viewshed or rarity of the location of the fences, such as a pasture field; and

(13) Degree of urgency to protect fences in imminent danger of being damaged or destroyed, including dangers posed by proximate position to roads.

Section 8. Allocation of Grant Assistance. (1) Available grant funds shall be allocated to eligible owners by the council based on the recommendation of the eligible plans approved by the director and in accordance with the prioritization system established in Section 7 of this administrative regulation.

(2) The council shall vote upon final awards of grant assistance at a meeting conducted in accordance with the Open Meetings Law, KRS 61.805 to 61.850, and Open Records Law, KRS 61.870 to 61.884.

(3) The council shall announce the award of grant assistance to applicants in writing within thirty (30) days after determining final awards.

Section 9. Execution of Performance and Maintenance Agreements. (1) After an application has been awarded grant assistance, the applicant and the council shall execute a performance and maintenance agreement.

(2) Funds shall not be made available to an eligible owner until a performance and maintenance agreement has been executed by all parties.

(3) Requirements of performance and maintenance agreements.

(a) The performance and maintenance agreement shall require the applicant to meet the following requirements:

1. The applicant shall agree to perform the reconstruction or restoration work in accordance with the standards for reconstruction or restoration as set forth in Section 3 of this administrative regulation.

2. Work shall commence after the execution of the performance and maintenance agreement and shall be completed within twelve (12) months from the date of execution of the performance and maintenance agreement.

3. Written requests for extensions of time or for amendments to the performance and maintenance agreements shall be approved by the director only if there is a showing of substantial justification;

(b) The applicant shall agree to maintain the approved project beginning with the date the performance and maintenance agreement was executed and thereafter for a term of five (5) years if the grant is $10,000 or less, for a term of ten (10) years if the grant is greater than $10,000 but less than $20,000, and for a term of twenty (20) years if the grant is $20,000 or more;

(c) In addition to a maintenance agreement, an applicant receiving a grant of $20,000 or more shall have executed a covenant between the owner and the council and recorded with the land records as an encumbrance running with the subject property for a period of twenty (20) years;

(d) Upon completion of the approved project, the applicant shall notify the council that the historic drylaid rock fences or historic mortared rock fences have been restored and shall provide to the council adequate documentation, including photographs, of the completed project;

(e)1. The applicant shall agree that if there is a transfer of ownership of the property within the term established in Section 9(3)(b) of this administrative regulation from date of execution of the performance and maintenance agreement, the applicant shall execute a contract with the transferee requiring continuation of those performance and maintenance agreement until the expiration of the term.

2. If the transferee does not agree in writing to properly maintain the historic drylaid rock fences or historic mortared rock fences for the remainder of the term, the applicant shall refund all or part of the grant assistance, as determined by the council;

(f) The applicant shall agree that if the applicant fails to comply with the terms of the performance and maintenance agreement, the council shall, upon reasonable notice to the recipient, withhold further payment, suspend the grant, terminate the grant for cause, or take other legally available remedies that shall be appropriate under the circumstances to recover the funds disbursed; and

(g)1. An applicant shall comply with all appropriate state or federal laws governing the available grant funds, including permits, environmental requirements, records retention, prevailing wage rates;

2. All procurements shall follow KRS Chapter 45A or 424, and

3. All procurements shall follow local procurement guidelines.

(4) Effect of performance and maintenance agreement. Requirements for performance and maintenance applied to the historic drylaid rock fences or historic mortared rock fences using grant assistance shall be established in the performance and maintenance agreement.

(5) To receive funds the recipient shall provide the following:

(a) A Request for Reimbursement form accompanied by adequate supporting documentation including cancelled checks, proof of payment, invoices, and receipts; and

(b) Photographic documentation and written verification from the owner that the project has been completed in accordance with the performance and management agreement.

(6) The council reserves the right to conduct on site monitoring of the project at any time during the term of the performance and maintenance agreement.

(7) Refund of funds disbursed. The council shall require a refund of grant assistance if an approved eligible plan has not been performed or the restored historic drylaid rock fences or historic mortared rock fences have not been maintained in compliance with approved standards of reconstruction or restoration as agreed in the performance and maintenance agreement.

(8)(a) Limitations on awards. Grant assistance awarded to an individual or for-profit entity shall be limited to fifty (50) percent of the actual cost, not to exceed an amount approved by the council, with the assisted applicant providing fifty (50) percent or more of the cost, which may include federal, local, or in-kind support.

(b) Grant assistance awarded to a nonprofit entity shall be limited to sixty (60) percent of the actual cost, not to exceed an amount approved by the council, with the assisted applicant providing forty

(40) percent or more of the cost, which may include federal, local, or in-kind support.

(9) Grant assistance shall not be awarded to projects in progress prior to execution of the performance and maintenance agreement.

Section 10. Appeals. (1) Procedure for filing appeal. An applicant aggrieved by a decision of the council to deny an application or limit the amount of grant assistance assurance may file written objections with the director within thirty (30) days of the decision establishing the basis for the appeal.

(a) The director shall notify the applicant that the applicant may appear and present testimony or written documentation on the issues presented by the appeal.

(b) The director shall have thirty (30) days in which to make a decision and to notify the applicant.

(2) Review of final decision. The decisions of the director may be appealed to the Franklin Circuit Court.

Section 11. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Kentucky Rock Fence Preservation Grant Application", (KHC Form RFPP-1, Rev. 2008), Kentucky Heritage Council;

(b) "Kentucky Rock Fence Preservation Grant Request for Reimbursement", (KHC Form RFPP-2, Rev. 2008), Kentucky Heritage Council;

(c) "Kentucky Rock Fence Preservation Performance and Maintenance Agreement", (KHC Form RFPP-3, Rev. 2008), Kentucky Heritage Council;

(d) "Special Note for Drylaid Rock Fences", (KHC Form RFPP-4, Rev. 2008).

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Heritage Council, 300 Washington Street, Frankfort, Kentucky 40601, Monday through Friday, 9 a.m. to 4 p.m.

DONNA M. NEARY, Executive Director

APPROVED BY AGENCY:

FILED WITH LRC: June 13, 2008 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 24, 2008, at 10 a.m (EST) at the offices of the Kentucky Heritage Council, 300 Washington Street, 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 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, 2008. 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. Peggy D. Guier, Staff Attorney, Kentucky Heritage Council, 300 Washington Street, Frankfort, Kentucky 40601, phone (502) 564-7005, ext. 129, fax (502) 564-5280.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Peggy D. Guier

(1) Provide a brief summary of:

(a) What this administrative regulation does: Sets forth eligibility and priority criteria for participation in the Kentucky Heritage Council's Kentucky Rock Fence Preservation grant program. The grant program will enable the Kentucky Heritage Council to protect historic resources for future generations by providing financial and technical assistance to property owners engaged in reconstruction or restoration of historic drylaid rock fences and historic mortared rock fences located in Kentucky.

(b) The necessity of this administrative regulation: This regulation provides standardize grant procedures, sets forth objective eligibility and priority criteria for selection of approved grant projects, and requires the continued maintenance of historic drylaid rock fences and historic mortared rock fences for a period of time following reconstruction or restoration.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 171.393 authorize the Kentucky Heritage Council, in consultation with the Dry Stone Conservancy, to promulgate administrative regulations governing administration of the Kentucky Rock Fence Preservation Program, and KRS 171.381(3)(f) permits the Kentucky Heritage Council to adopt rules and regulations as may be necessary and incidental to the performance of the council's duties and functions.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes. This regulation will adopt a uniform process for selection of eligible grant projects and assure that the historic drylaid rock fences and historic mortared rock fences meet the United States Secretary of the Interior's Standards for Reconstruction or Restoration.

(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: any owner of real property located in Kentucky upon which historic drylaid rock fences and historic mortared rock fences are situated. Owner shall include person, partnership, corporation, public agency, or other entity holding a fee simple interest in property located in Kentucky. A lessee of property shall be considered the owner of the property if the remaining term of the lease is not less than twenty-seven and one-half (27 1/2) years for residential property and thirty-nine (39) years for all other 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 regulation will impact the owners of real property in Kentucky upon which historic drylaid rock fences and historic mortared rock fences are situated by providing a potential source of funding for the reconstruction or restoration of those fences, insure reconstruction or restoration in accordance with the United States Secretary of the Interior's Standards for Reconstruction or Restoration, and require maintenance of those fences for a period of time.

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Eligible owners who wish to participate in the grant program will be required to timely submit an application which shall include documentation of historic drylaid rock fences and historic mortared rock fences that are in need of reconstruction or restoration through no deliberate act of the owner, a reconstruction or restoration plan that conforms to the standards for reconstruction or restoration, and the owner's consent to enter into a performance and maintenance agreement with the Council,

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no processing fees; however, each private or for-profit entity will be required to contribute fifty (50 %) percent of the approved grant amount as a match to the cost of the project and each nonprofit entity will be required to contribute forty (40%);

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Owners will be protecting an historic resource that will benefit the value and scenic characteristics of the property and will be insuring that reconstruction or restoration plans comply with uniform standards that protect the historic integrity of those resources.

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

(a) Initially: Most certification reviews will take place at the office of the Kentucky Heritage Council Most of the agency's work

to implement this regulation would be included in our normal budgetary costs.

(b) On a continuing basis: Same as initial cost. There may be additional travel costs if it becomes necessary to review projects at the sites. One staff member will review the application.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation. Funding for the administration of the grant program will come from the normal budget for the Kentucky Heritage Council, and funding for the grant program shall be through appropriations, gifts, grants, federal funds, revolving funds, and any other public and private sources available.

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

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

(9) TIERING: Is tiering applied (Explain why tiering was or was not used.) Tiering is not applied because grant eligibility would be determined based upon established priorities and documentation of projected cost.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Kentucky Heritage Council, an agency of the Commerce Cabinet.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 171 393, 171 381(3)(f)

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

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

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

(c) How much will it cost to administer this program for the first year? None, the agency's work to implement this regulation would be included in our normal budgetary costs.

(d) How much will it cost to administer this program for subsequent years? None, the agency's work to implement this regulation would be included in our normal budgetary costs.

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

Revenues (+/-):
Expenditures (+/-).
Other Explanation:

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department for Environmental Protection
Division of Water
(New Administrative Regulation)

401 KAR 10:001. Definitions for 401 KAR Chapter 10.

RELATES TO KRS 146.200-146 360, 146 410-146.535, 146 550-146.570, 146 600-146.619, 146.990, 224 01-010, 224.01-400, 224.16-050, 224.16-070, 224.70-100-224.70-140, 224.71-100-224.71-145, 224.73-100-224.73-120, 40 C F.R Part 136

STATUTORY AUTHORITY: KRS 224.10-100, 224.70-100, 224.70-110

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100 authorizes the Environmental and Public Protection Cabinet to promulgate administrative regulations for the prevention, abatement, and control of all water pollution. This administrative regulation establishes definitions for terms used in 401 KAR Chapter 10.

Section 1. Definitions (1) "Acute-chronic ratio" means the ratio of the acute toxicity, expressed as an LC_{50}, of an effluent or a toxic substance, to its chronic toxicity. It is used as a factor to estimate chronic toxicity from acute toxicity data.

(2) "Acute criteria" means the highest instream concentration of a toxic substance or an effluent to which an organism can be exposed for a brief period of time without causing an unacceptable harmful effect.

(3) "Acute toxicity" means lethality or other harmful effect sustained by either an indigenous aquatic organism or a representative indicator organism used in a toxicity test, due to a short-term exposure, of ninety-six (96) hours or less, to a specific toxic substance or mixture of toxic substances.

(4) "Acute toxicity unit" means the reciprocal of the effluent dilution that causes the acute effect, or LC_{50}, by the end of the acute exposure period.

(5) "Adversely affect" or "adversely change" means to alter or change the community structure or function, to reduce the number or proportion of sensitive species, or to increase the number or proportion of pollution tolerant aquatic species so that aquatic life use support or aquatic habitat is impaired.

(6) "Arithmetic mean for seven (7) consecutive days" means the average of a minimum of two (2) samples taken on separate days in a seven (7) day period.

(7) "Arithmetic mean for thirty (30) consecutive days" means the average of a minimum of three (3) samples collected in separate calendar weeks during a period of thirty (30) consecutive days with a minimum of twenty (20) days occurring between the first and last sample days.

(8) "Balanced indigenous community" means a biotic community typically characterized by diversity, the capacity to sustain itself through cyclic seasonal changes, presence of necessary food chain species, and a lack of domination by pollution tolerant species. The community may include historically nonnative species introduced in connection with a program of wildlife management and species whose presence or abundance results from substantial, irreversible environmental modification. Normally such a community does not include species whose presence or abundance is attributable to the introduction of pollutants that will be eliminated by compliance of all sources with 401 KAR 5.065, and may not include species whose presence or abundance is attributable to alternative effluent limitations imposed pursuant to 401 KAR 5.055.

(9) "Best management practices" or "BMPs" means:

(a) Schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of waters of the commonwealth; and

(b) Include treatment requirements, operating procedures, practices to control site run-off, pollution of surface water and groundwater from nonpoint sources, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.

(10) "Biochemical oxygen demand", "BOD", or "BOD_5" means the amount of oxygen required to stabilize biodegradable organic matter under aerobic conditions within a five (5) day period. Other time periods may be measured, and if so, are indicated where the term is used.

(11) "Carbonaceous biochemical oxygen demand" or "CBOD" means BOD, not including the nitrogenous oxygen demand of the wastewater.

(12) "Chronic criteria" means the highest instream concentration of a toxic substance or an effluent to which organisms are able to be exposed indefinitely without causing an unacceptable harmful effect.

(13) "Chronic toxicity" means lethality, reduced growth or reproduction, or other harmful effect sustained by either indigenous aquatic organisms or representative indicator organisms used in toxicity tests due to long-term exposures, relative to the life span of the organisms or a significant portion of their life span, to toxic substances or mixtures of toxic substances.

(14) "Chronic toxicity unit" means the reciprocal of the effluent dilution that causes twenty-five (25) percent inhibition of growth or reproduction to the test organisms by the end of the chronic exposure period.

(15) "Clean Water Act" or "CWA" means the Clean Water Act as subsequently amended, 33 U.S.C. Section 1251 through 1387, otherwise known as the Federal Water Pollution Control Act.

(16) "Coal remining operation" means:

(a) A surface coal mining operation which begins after July 11, 1990, at a site on which a coal mining operation was conducted before August 3, 1977; and

(b) A surface coal mining operation existing on July 11, 1990, which receives a permit revision from the Department for Surface Mining Reclamation and Enforcement (DSMRE) in accordance with 405 KAR 8 010, Section 20, for a site on which a coal mining operation was conducted before August 3, 1977.

(17) "Cold water aquatic habitat" or "CAH" means surface waters and associated substrate that are able to support indigenous aquatic life or self-sustaining or reproducing trout populations on a year-round basis.

(18) "Concentrated animal feeding operation" is defined by 401 KAR 5.002, Section 1(37).

(19) "Conventional pollutant" means biochemical oxygen demand (BOD), chemical oxygen demand (COD), total organic carbon (TOC), total suspended solids (TSS), ammonia (as N), bromide, chlorine (total residual), color, fecal coliform, fluoride, nitrate, kjeldahl nitrogen, oil and grease, and phosphorus.

(20) "Conventional treatment" means or includes coagulation, sedimentation, filtration, and disinfection.

(21) "Criteria" means specific concentrations or ranges of values, or narrative statements of water constituents which represent a quality of water expected to result in an aquatic ecosystem protective of designated uses of surface waters. Criteria are derived to protect legitimate uses such as aquatic life, domestic water supply, and recreation and to protect human health.

(22) "Day" means a twenty-four (24) hour period.

(23) "Discharge" or "discharge of a pollutant" means the addition of a pollutant or combination of pollutants to waters of the commonwealth from a point source.

(24) "Division" means the Kentucky Division of Water, within the Department for Environmental Protection, Environmental and Public Protection Cabinet.

(25) "Domestic" means relating to household wastes or other similar wastes. It is used to distinguish municipal, household, or commercial water or wastewater services from industrial water or wastewater services.

(26) "Domestic sewage" means sewage devoid of industrial or other wastes and that is typical of waste received from residential facilities. It may include wastes from commercial developments, schools, restaurants, and other similar developments.

(27) "Domestic water supply" or "DWS" means surface waters that with conventional treatment are suitable for human consumption through a public water system as defined in 401 KAR 8:010, culinary purposes, or for use in a food or beverage processing industry; and meet state and federal regulations under the Safe Drinking Water Act, as amended, 42 U.S.C. 300f - 300j-26.

(28) "Effluent limitations" is defined at KRS 224 01-010(12).

(29) "Environmental Protection Agency" or "EPA" means the United States Environmental Protection Agency.

(30) "Epilimnion" means the thermally homogeneous water layer overlying the metalimnion of a thermally stratified lake or reservoir.

(31) "E. coli" or "Escherichia coli" means an aerobic and facultative anaerobic gram negative, nonspore forming, rod shaped bacterium that can grow at forty-four and five tenths (44.5) degrees Celsius, that is ortho-nitrophenyl-B-D-galactopyranoside (ONPG) positive, and Methylumbelliferyl glucuronide (MUG) positive. It is a member of the indigenous fecal flora of warm-blooded animals.

(32) "Eutrophication" means the enrichment of a surface water by the discharge or addition of a nutrient.

(33) "Exceptional water" means a surface water categorized as exceptional by the cabinet pursuant to 401 KAR 10.030.

(34) "Existing use" means a legitimate use being attained in or on a surface water of the commonwealth on or after November 28, 1975, irrespective of its use designation.

(35) "Expanded discharge" means an increase in pollutant loading of twenty (20) percent or greater.

(36) "°F" means degrees Fahrenheit.

(37) "General permit" means a KPDES permit authorizing a category of discharges under KRS Chapter 224 within a geographical area, issued under 401 KAR 5:055.

(38) "Harmonic mean flow" means the reciprocal of the mean of the reciprocal daily flow values

(39) "High quality water" means a surface water categorized as high quality by the cabinet pursuant to 401 KAR 10:030.

(40) "Impact" means a change in the chemical, physical, or biological quality or condition of a surface water.

(41) "Impairment" means a detrimental impact to a surface water that prevents attainment of a designated use.

(42) "Indigenous aquatic community" means naturally occurring aquatic organisms including bactena, fungi, algae, aquatic insects, other aquatic invertebrates, reptiles, amphibians, and fishes. Under some natural conditions one (1) or more of the above groups may be absent from a surface water.

(43) "Inhibition concentration of twenty-five (25) percent" or "IC_{25}" means the concentration that is determined by a linear interpolation method for estimating the concentration at which a twenty-five (25) percent reduction is shown in reproduction or growth in test organisms, and which statistically approximates the concentration at which an unacceptable chronic effect is not observed.

(44) "Intermittent water" means a stream that flows only at certain times of the year.

(45) "Kentucky Pollutant Discharge Elimination System" or "KPDES" means the Kentucky program for issuing, modifying, revoking and reissuing, revoking, monitoring and enforcing permits to discharge, and imposing and enforcing pretreatment requirements.

(46) "KPDES permit" means a Kentucky Pollutant Discharge Elimination System permit issued to a facility, including a POTW, or activity pursuant to KRS Chapter 224 for the purpose of operating the facility or activity.

(47) "LC_1" means that concentration of a toxic substance or mixture of toxic substances that is lethal, or immobilizing if appropriate, to one (1) percent of the organisms tested in a toxicity test during a specified exposure period.

(48) "LC_{50}" means that concentration of a toxic substance or mixture of toxic substances that is lethal, or immobilizing if appropriate, to fifty (50) percent of the species tested in a toxicity test during a specified exposure period.

(49) "Maintain" means to preserve or keep in present condition by not allowing an adverse permanent or long-term change to water quality or to a population of an aquatic organism or its habitat.

(50) "Measurement" means the ability of the analytical method or protocol to quantify as well as identify the presence of the substance in question.

(51) "µg/l" means micrograms per liter, same as ppb, assuming unit density.

(52) "mgd" or "MGD" means million gallons per day.

(53) "Milligrams per liter" or "mg/l" means the milligrams of substance per liter of solution, and is equivalent to parts per million in water, assuming unit density.

(54) "Mixing zone" means a domain of a water body contiguous to a treated or untreated wastewater discharge with quality characteristics different from those of the receiving water. The discharge is in transit and progressively diluted from the source to the receiving system. The mixing zone is the domain where wastewater and receiving water mix.

(55) "Modified Warm Weather Aquatic Habitat" means water that has been found to be incapable of supporting and maintaining a balanced, integrated, adaptive community of warm water organisms because of largely irretrievable man-induced changes in the watershed or to the physical habitat of the stream itself.

(56) "Natural temperature" means the temperature that would exist in waters of the commonwealth without the change of enthalpy of artificial origin, as contrasted with that caused by climatic change or naturally occurring variable temperature associated with riparian vegetation and seasonal changes.

(57) "Natural water quality" means those naturally occurring

physical, chemical, and biological properties of waters.

(58) "Net discharge" means the amount of substance released to a surface water by excluding the influent value from the effluent value if both the intake and discharge are from and to the same or similar body of water.

(59) "Nonconventional pollutant" means a pollutant not considered to be a conventional pollutant, including priority pollutants identified in 401 KAR 5:060.

(60) "Nonpoint" means any source of pollutants not defined by a point source.

(61) "Outstanding national resource water" means a surface water categorized by the cabinet as an outstanding national resource water pursuant to 401 KAR 10:030.

(62) "Outstanding state resource water" means a surface water designated by the cabinet as an outstanding state resource water pursuant to 401 KAR 10:031.

(63) "pCi/l" means picocuries per liter.

(64) "PCR" means primary contact recreation.

(65) "Point source" means a discernible, confined, and discrete conveyance from which pollutants are or may be discharged. The term does not include agricultural storm water run-off or return flows from irrigated agriculture.

(66) "POTW" means publicly-owned treatment works as defined in KRS 224.01-010.

(67) "Preexisting discharge" means a discharge that is occurring when applying for a KPDES permit under 401 KAR 5:040 or 401 KAR 10:029.

(68) "Primary contact recreation water" means those waters suitable for full body contact recreation during the recreation season of May 1 through October 31.

(69) "Productive aquatic community" means an assemblage of indigenous aquatic life capable of reproduction and growth.

(70) "Propagation" means the continuance of a species by successful spawning, hatching, and development or natural generation in the natural environment, as opposed to the maintenance of the species by artificial culture and stocking.

(71) "Regional facility plan" means a type of water quality management plan addressing point sources of pollution for the purpose of areawide waste treatment management planning prepared by the designated regional planning agency pursuant to Section 201, 205, and 208 of the Clean Water Act to control point sources of pollution within a planning area.

(72) "Remined area" means only that area of a coal remining operation on which a coal mining operation was conducted before August 3, 1977.

(73) "Representative indicator organism" means an aquatic organism designated for use in toxicity testing because of its relative sensitivity to toxicants and its widespread distribution in the aquatic environment.

(74) "SCR" means secondary contact recreation.

(75) "Secondary contact recreation waters" means those waters suitable for partial body contact recreation, with minimal threat to public health due to water quality.

(76) "Seven-Q-ten" or "$7Q_{10}$" means that minimum average flow which occurs for seven (7) consecutive days with a recurrence interval of ten (10) years.

(77) "Source" means a building, structure, facility, or installation from which there is or may be a discharge of pollutants.

(78) "Standard" means a water quality standard.

(79) "Stormwater" means stormwater run-off, snow melt run-off, and surface run-off and drainage.

(80) "Surface waters" means those waters having well-defined banks and beds, either constantly or intermittently flowing; lakes and impounded waters; marshes and wetlands; and any subterranean waters flowing in well-defined channels and having a demonstrable hydrologic connection with the surface. Effluent ditches and lagoons used for waste treatment that are situated on property owned, leased, or under valid easement by a permitted discharger are not considered to be surface waters of the commonwealth.

(81) "Total dissolved solids" or "TDS" means the total dissolved solids (filterable residue) as determined by use of the method specified in 40 C.F.R. Part 136.

(82) "Total suspended solids" or "TSS" means the total suspended solids (nonfilterable residue) as determined by use of the method specified in 40 C.F.R. Part 136.

(83) "Toxic substance" means a substance that is bioaccumulative, synergistic, antagonistic, teratogenic, mutagenic, or carcinogenic and causes death, disease, a behavioral abnormality, a physiological malfunction, or a physical deformity in an organism or its offspring or interferes with normal propagation.

(84) "U.S. EPA" means the United States Environmental Protection Agency.

(85) "Warm water aquatic habitat" or "WAH" means a surface water and associated substrate capable of supporting indigenous warm water aquatic life.

(86) "Wetlands" means land that has a predominance of hydric soils and that is inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances does support, a prevalence of hydrophytic vegetation typically adapted for life in saturated soil conditions.

(87) "Zone of initial dilution" means the limited area permitted by the cabinet surrounding or downstream from a discharge location where rapid, first-stage mixing occurs. The zone of initial dilution is the domain where wastewater and receiving water initially mix.

ROBERT D. VANCE, Secretary

APPROVED BY AGENCY: June 6, 2008

FILED WITH LRC: June 12, 2008 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 23, 2008 at 6:30 p.m. (Eastern Time) at the Capitol Annex, Room 149, 702 Capitol Avenue, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by July 16, 2008, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. If you request a transcript, you may be required to pay for it. 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, 2008. 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: Abigail Powell, Regulations Coordinator, Division of Water, 14 Reilly Road, Frankfort, Kentucky 40601, phone (502) 564-3410, fax (502) 564-0111, email Abigail.Powell@ky.gov

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Sandy Gruzesky, Director

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes definitions for terms used in 401 KAR Chapter 10.

(b) The necessity of this administrative regulation. This regulation defines the terms used in the chapter.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 224.10-100, 224.70-100, and 224.70-110 authorize the cabinet to establish administrative regulations to protect water quality.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will provide definitions for terms used throughout the chapter so that the other regulations in the chapter may be properly interpreted and enforced.

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

(a) How the amendment will change this existing administrative regulation: Not applicable; this is a new administrative regulation.

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

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

(d) How the amendment will assist in the effective administra-

tion of the statutes: Not applicable.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All individuals, businesses, organizations, and governments that use the Commonwealth's surface waters for residential, commercial, industrial, or recreational purposes could be impacted by this regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: None

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no cost.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Affected entities will be able to understand the terms used throughout 401 KAR Chapter 10.

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

(a) Initially: There are no initial costs as a result of creating this administrative regulation.

(b) On a continuing basis: There are no continuing costs as a result of creating this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation? Not applicable.

(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 established any fees or directly or indirectly increased any fees: This administrative regulation does not establish or increase fees.

(9) TIERING: Is tiering applied? Tiering is not applied because definitions do not require tiering.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Government entities using these regulations will be able to find definitions for terms used throughout the chapter.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 224.10-100, 224.70-100, and 224.70-110 authorize the cabinet to establish administrative regulations to protect water quality.

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

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

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

(c) How much will it cost to administer this program for the first year? There will be no cost.

(d) How much will it cost to administer this program for subsequent years? There will be no cost.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department for Environmental Protection
Division for Air Quality
(Repealer)

401 KAR 60:021. Repeal of 401 KAR 60:020.

RELATES TO: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 40 C.F.R 60, 72, 75, 42 U.S.C. 7410, 7411

STATUTORY AUTHORITY: KRS 224.10-100(5), 42 U.S.C. 7410, 7411

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100(5) requires the Environmental and Public Protection Cabinet to promulgate administrative regulations for the prevention, abatement, and control of air pollution. The administrative regulation being repealed established requirements for the control of mercury emissions from coal-fired electric generating units, pursuant to the federal mandate published under the Clean Air Mercury Rule (CAMR), 40 C.F.R. 60.4101 to 60.4176. This administrative regulation is being repealed due to the federal rule being vacated by the D C. Court of Appeals on March 14, 2008.

Section 1. 401 KAR 60.020, Mercury Budget Trading Program, is hereby repealed.

HANK LIST, Deputy Secretary
For ROBERT D. VANCE, Secretary

APPROVED BY AGENCY: June 12, 2008

FILED WITH LRC: June 13, 2008 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held July 23, 2008 at 10 a m. (local time) at the Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency five (5) workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. A transcript of the public hearing will be made. If you request a transcript, you will be required to pay for the transcript. Written comments shall be accepted until close of business on July 31, 2008. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person. The hearing facility is accessible to persons with disabilities. Requests for reasonable accommodations, including auxiliary aids and services necessary to participate in the hearing, may be made to the contact person at least five (5) workdays prior to the hearing.

CONTACT PERSON: Laura Lund, Environmental Technologist I, Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky 40601, phone (502) 573-3382, fax (502) 573-3787, and e-mail Laura_Lund@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Laura Lund

(1) Provide a bnef summary of:

(a) What this administrative regulation does: This administrative regulation repeals an existing administrative regulation, 401 KAR 60 020, Mercury Budget Trading Program.

(b) The necessity of this administrative regulation: This administrative regulation is being repealed due to CAMR (the Clean Air Mercury Rule) being vacated by the D.C. Court of Appeals on March 14, 2008.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation is being repealed due to the federal regulation upon which it was promulgated having been vacated.

(d) How this administrative regulation currently assists or will

assist in the effective administration of the statutes This administrative regulation repeals an existing regulation.

(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 administrative regulation is not an amendment.

(b) The necessity of the amendment to this administrative regulation: This administrative regulation is not an amendment.

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation is not an amendment.

(d) How the amendment will assist in the effective administration of statutes: This administrative regulation is not an amendment.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation. The Mercury Budget Trading Program sought to limit mercury emissions from new and existing coal-fired power plants and establish a nation-wide cap and trade program for mercury emissions. With its repeal, coal-fired power plants will not be required to reduce their emissions.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No actions are required to comply with the repeal of this administrative regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No costs are associated with the repeal of this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3):
Sources may have a higher level of production since they will no longer be required to reduce mercury emissions.

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

(a) Initially: The cabinet will not incur any additional costs in the repeal of this administrative regulation.

(b) On a continuing basis: There will not be any continuing costs associated with the repeal of this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: There are no costs associated with the repeal of this administrative regulation.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees.
This administrative regulation will not establish any fees, nor will it directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? No. Tiering does not apply to the repeal of this administrative regulation.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? No

2. State what units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The repeal of this administrative regulation will not apply to any unit of state or local government.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 224.10-100(5), and 42 U.S.C. 7410, 7411

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? There is no estimated revenue generation for the state or local government due to the repeal of this administrative regulation.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? There is no estimated revenue generation for the state or local government due to the repeal of this administrative regulation.

(c) How much will it cost to administer this program for the first year? There are no costs associated with the repeal of this administrative regulation.

(d) How much will it cost to administer this program for subsequent years? There are no costs associated with the repeal of this administrative regulation.

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

Revenues (+/-). There is no known effect on current revenues.

Expenditures (+/-): There is no known effect on expenditures associated with the repeal of this administrative regulation.

Other Explanation: There is no further explanation.

FEDERAL MANDATE ANALYSIS

1. Federal statute or regulation constituting the federal mandate. The federal mandate was found at 40 C.F.R. 60.4101 to 60.4176 as published at 70 Fed. Reg 28606 (May 18, 2005). The federal regulation was vacated by the D.C. Court of Appeals on March 14, 2008.

2. State compliance standards. The state compliance standards were found in KRS 224.10-100, 224.20-100, 224 20-110, and 224.20-120.

3. Minimum or uniform standards contained in the federal mandate. The administrative regulation being repealed established requirements for the control of mercury emissions from coal-fired electric generating units, pursuant to the federal mandate published under the Clean Air Mercury Rule (CAMR). This administrative regulation is being repealed due to the federal rule being vacated by the D.C. Court of Appeals on March 14, 2008.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. The repeal of this administrative regulation makes Kentucky law compatible with the federal law since it was vacated by the D.C. Court of Appeals on March 14, 2008.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Stricter standards or requirements are not imposed.

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE
Minutes of June 10, 2008

The June meeting of the Administrative Regulation Review Subcommittee was held on Tuesday, June 10, 2008 at 10:00 a.m., in Room 149 of the Capitol Annex. Representative Robert Damron called the meeting to order, the roll call was taken. The minutes of the May 13, 2008 meeting were approved.

Present were:

Members: Senators Joey Pendleton, Richard "Dick" Roeding, and Gary Tapp; and Representatives Robert Damron, Danny Ford, Jimmie Lee, and Ron Weston.

LRC Staff: Dave Nicholas, Donna Little, Kara Daniel, Emily Harkenrider, Laura Milam, Emily Caudill, Jennifer Beeler, Laura Napier, and Ellen Steinberg.

Guests: Theresa Gargan, Melissa Justice, Kentucky Higher Education Assistance Authority; Cindy Owen, Alicia Sneed, Education Professional Standards Board; Joe Cowles, Dr. Sissy Meredith, N. Jeanne Olivas, Jon Samokar, Personnel Cabinet; Jeffrey Osman, Kentucky Board of Pharmacy; Karen Alexy, Kristina Brunjes, Steven Dobs, Benjy Kinman, Catherine York, Kentucky Department of Fish and Wildlife Resources; Amy Barker, Brenn Combs, Mark Mangeot, Kirstie Willard, Justice and Public Safety Cabinet; Timothy Lucas, Kevin Noland, Kentucky Board of Education; Glenn Bryant, IJ Eneje, Department for Mental Health and Mental Retardation.

The Administrative Regulation Review Subcommittee met on Tuesday, June 10, 2008, and submits this report:

KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY: Division of Student and Administrative Services: Authority

11 KAR 4:080. Student aid applications. Melissa Justice, senior associate counsel, represented the authority.

KHEAA Grant Programs

11 KAR 5:145. CAP grant award procedure.

Robert C. Byrd Honors Scholarship Program

11 KAR 18:010. Robert C. Byrd Honors Scholarship Program.

In response to a question by Co-Chair Roeding, Ms. Justice stated that the writing component of the SAT was being omitted from the scoring calculation used to determine scholarship eligibility in order to achieve consistency with the ACT.

A motion was made and seconded to approve the following amendments: to amend Section 3 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

EDUCATION PROFESSIONAL STANDARDS BOARD: Board

16 KAR 7:010. Kentucky Teacher Internship Program. Alicia Sneed, director of legal services, and Cindy Owen, director of the division of professional learning and assessment, represented the board.

In response to a question by Co-Chair Roeding, Ms. Sneed stated that this administrative regulation would not lessen the amount of paperwork for teachers but would improve intern assessment and provide a standard rubric for evaluation of interns.

A motion was made and seconded to approve the following amendments: (1) to amend the STATUTORY AUTHORITY paragraph and Section 5 to correct statutory citations, (2) to amend Sections 2 to 8 and 10 to comply with the drafting and format requirements of KRS Chapter 13A; (3) to amend Section 5 to require the resource teacher to submit the Resource Teacher Time Sheet; and (4) to amend Section 6 to specify that the internship record shall include the KTIP Intern Performance Record or the KTIP IECE Intern Performance Record. Without objection, and with agreement of the agency, the amendments were approved.

PERSONNEL CABINET: Classified

101 KAR 2.221. Employee Educational Assistance Program. Joe Cowles, office of legal services; Dr. Sissy Meredith, executive director; and Jon Samokar, performance consultant, represented the cabinet.

A motion was made and seconded to approve the following amendments: (1) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 to 7 to comply with the drafting and format requirements of KRS Chapter 13A; and (2) to amend Section 7 to incorporate by reference the required Employee Educational Assistance Program Form. Without objection, and with agreement of the agency, the amendments were approved.

GENERAL GOVERNMENT CABINET: Kentucky Board of Pharmacy: Board

201 KAR 2.220. Collaborative care agreements. Jeffrey Osman, pharmacy coordinator, represented the board.

COMMERCE CABINET: Department of Fish and Wildlife Resources: Fish

301 KAR 1:130. Live bait for personal use. Karen Alexy, wildlife director; Benjy Kinman, fisheries director; and Catherine York, deputy general counsel, represented the department.

In response to questions by Senator Tapp, Mr. Kinman stated that the penalty for taking a threatened or endangered fish was administered by the U.S. Department of Fish and Wildlife and could be severe. He stated that the published fishing guide had pictures of endangered and threatened fish to help fishermen identify and avoid them. He stated that the department's officers exercised discretion to avoid unfair penalties.

In response to questions by Co-Chair Roeding, Mr. Kinman stated that a threatened species was at risk while an endangered species was on the brink of extinction. He stated that the state followed the federal classifications. He stated that a sport cast net was used to catch fish by throwing the net in the water.

A motion was made and seconded to approve the following amendments: to amend Sections 1 through 3 to clarify a cross reference citation 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.

Game

301 KAR 2.049. Small game and furbearer hunting and trapping on public areas.

A motion was made and seconded to approve the following amendments: to amend Sections 2 to 5 to comply with the formatting and drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

301 KAR 2.081. Transportation and holding of native wildlife.

In response to questions by Senator Pendleton, Ms. Alexy stated that this administrative regulation applied to native wildlife and not captive cervids.

In response to questions by Co-Chair Roeding and Co-Chair Damron, Ms. Alexy stated that capturing native wildlife and selling it, or parts of it, was prohibited unless the seller had a proper permit. She stated that animals raised in captivity could be sold.

In response to questions by Representative Ford, Ms. Alexy stated that coyotes and foxes were sometimes trapped and used to train dogs to chase them and that a trailer with coyotes and foxes was intercepted last fall.

In response to questions by Co-Chair Damron, Ms. Alexy stated that farmers with problem coyotes could kill them at any time without a permit and that hunters and trappers with a permit could go to the farm to trap and kill them, but could not sell them. She stated that a farmer could also use a shooter designation form to give someone else authority to kill coyotes for the farmer.

A motion was made and seconded to approve the following amendments: (1) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to make a technical correction; and (2) to amend Sections 1 to 3 and 6 to comply with the formatting and

drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

301 KAR 2.111. Deer and turkey hunting on special areas.

301 KAR 2 122. Seasons, methods, and limits for small game.

301 KAR 2.172. Deer hunting seasons, zones, and requirements.

A motion was made and seconded to approve the following amendments: to amend Sections 4, 5, and 10 to comply with the formatting and drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

301 KAR 2:178. Deer hunting on Wildlife Management Areas and state parks.

A motion was made and seconded to approve the following amendments: to amend Sections 6 and 8 to comply with the formatting and drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Wildlife

301 KAR 4:201. Repeal of 301 KAR 4:200.

JUSTICE AND PUBLIC SAFETY CABINET: Department of Corrections: Jail Standards for Restricted Custody Center Facilities

501 KAR 7.070. Safety; emergency procedures. Mark Mangeot, legislative liaison; Amy Barker, assistant general counsel; and Kirstie Willard, jail services specialist, represented the cabinet.

EDUCATION CABINET: Kentucky Board of Education: Department of Education: Facilities Management

702 KAR 4:180. Implementation guidelines - Kentucky School Facilities Planning Manual. Kevin Noland, general counsel, represented the board.

In response to questions by Co-Chair Roeding, Mr. Noland stated that the department surveys all school districts regarding the condition of their buildings and what impact their condition had on the students. He stated that the maximum fee that a district was allowed to pay to an architect-engineering firm was increased from 3 25 cents per square foot to five cents per square foot.

In response to a question by Senator Tapp, Mr. Noland stated that value engineering was encouraged.

In response to questions by Co-Chair Damron, Mr. Noland stated that many decisions affecting the cost of facilities were made by the architect or contractor working on the project. He stated that modular additions instead of trailers have been considered but were not usually a better choice.

A motion was made and seconded to approve the following amendments: (1) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to add a statutory citation and clearly state the function of this administrative regulation; (2) to amend the Kentucky School Facilities Planning Manual to require that a Local Planning Council be a diverse committee that reflects the demographics of the district; and (3) to amend Sections 1 through 5 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

The following administrative regulations were deferred to the next meeting of the Subcommittee:

PERSONNEL BOARD: Board

101 KAR 1:335. Employee actions.

GENERAL GOVERNMENT CABINET: Kentucky Board of Veterinary Examiners: Board

201 KAR 16:110. Prescriptions and dispensation of drugs for animal use.

COMMERCE CABINET: Department of Fish and Wildlife Resources: Fish

301 KAR 1:140. Special commercial fishing permit for Barkley and Kentucky Lakes.

301 KAR 1.146. Commercial fishing gear.

301 KAR 1:155. Commercial fishing requirements.

Hunting and Fishing

301 KAR 3:022. License, tag, and permit fees.

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET: Department for Environmental Protection: Division of Waste Management: Standards Applicable to Generators of Hazardous Waste

401 KAR 32.010. General provisions for generators.

Standards for Owners and Operators; Storage, Treatment and Disposal Facilities

401 KAR 34 005. Definitions for 401 KAR Chapter 34.

Interim Status Standards for Owners and Operators; Treatment, Storage and Disposal Facilities

401 KAR 35 005. Definitions for 401 KAR Chapter 35.

Standards for Management of Specific Hazardous Wastes and Specific Types of Hazardous Waste Management Facilities

401 KAR 36:030. Recyclable materials used in a manner constituting disposal.

Land Disposal Restrictions

401 KAR 37:040. Treatment standards.

Hazardous Waste Permitting Process

401 KAR 38:040. Changes to permits; expiration of permits.

Standards for Special Collection System Wastes

401 KAR 43:005. Definitions for 401 KAR Chapter 43.

JUSTICE AND PUBLIC SAFETY CABINET: Department of Corrections: Jail Standards for Full-service Facilities

501 KAR 3.140. Prisoner rights. Mark Mangeot, legislative liaison; Amy Barker, assistant general counsel; and Kirstie Willard, jail services specialist, represented the cabinet.

In response to questions by Representative Lee, Ms. Willard stated that the jailers had requested the reduction in the amount of annual mental health training from four hours to one hour. Mr. Mangeot stated that the reduction applied only to local jails but included new employees. Ms. Barker stated that there was a process in place to identify prisoners with mental illness at the time they entered the jail and to contact mental health professionals if needed.

A motion was made and seconded to defer consideration of this administrative regulation until the Subcommittee's July meeting. Mr. Mangeot stated that the department would agree to defer this administrative regulation. Without objection, and with agreement of the agency, the administrative regulation was deferred.

Jail Standards for Life Safety Facilities

501 KAR 13.010. Life safety issues.

In response to questions by Representative Ford, Ms. Willard stated that this administrative regulation requiring jails that do not house state prisoners to be smoke free was an effort to establish a consistent policy for all jails. She stated that jailers supported the policy and they received no negative feedback about the smoke free policy.

A motion was made and seconded to defer consideration of this administrative regulation until the Subcommittee's July meeting. Mr. Mangeot stated that the department would agree to defer this administrative regulation. Without objection, and with agreement of the agency, the administrative regulation was deferred.

TRANSPORTATION CABINET: Department of Vehicle Regulation: Driver Improvement

601 KAR 13 070. KRS 159.051. Compliance verification for a minor.

EDUCATION CABINET: Kentucky Board of Education: Department of Education: School Administration and Finance

702 KAR 3:270. SEEK funding formula.

School Terms, Attendance and Operation

702 KAR 7:065. Designation of agent to manage high school

interscholastic athletics.

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET: Department of Public Protection: Office of Insurance: Trade Practices and Frauds

806 KAR 12:180. Military sales practices.

Kentucky Horse Racing Authority: Thoroughbred Racing

810 KAR 1:015 Claiming races.

CABINET FOR HEALTH AND FAMILY SERVICES: Office of the Secretary: E-Health

900 KAR 7.020. Kentucky e-Health Corporation.

Department for Medicaid Services: Medicaid Services

907 KAR 1.013 & E. Diagnostic-related group (DRG) inpatient hospital reimbursement.

Department for Mental Health and Mental Retardation: Institutional Care

908 KAR 3:050. Per diem rates. Glenn Bryant, acting director, and Ijeoma Eneje, regulation coordinator, represented the department.

In response to questions by Representative Lee, Mr. Bryant stated that the rate for different facilities varied because they were based on Medicaid cost reports for different facilities. He stated that the department predicted these changes would be close to what Medicare and Medicaid would pay when it changed rates. He stated that the rate changes were statutorily required and therefore could not wait until after the Medicare and Medicaid rates were set.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Section 1 to correct typographical errors 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.

A motion was made and seconded to defer consideration of this administrative regulation as amended until the Subcommittee's July meeting. Mr. Bryant stated that the department would agree to defer this administrative regulation as amended. Without objection, and with agreement of the agency, the administrative regulation as amended was deferred.

The Subcommittee adjourned at 11:10 a.m. until July 8, 2008.

OTHER COMMITTEE REPORTS

COMPILER'S NOTE: In accordance with KRS 13A.290(9), the following reports were forwarded to the Legislative Research Commission by the appropriate jurisdictional committees and are hereby printed in the Administrative Register. The administrative regulations listed in each report became effective upon adjournment of the committee meeting at which they were considered.

NONE

CUMULATIVE SUPPLEMENT

Locator Index - Effective Dates A - 2

The Locator Index lists all administrative regulations published in VOLUME 35 of the Administrative Register from July, 2008 through June, 2009. 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 34 are those administrative regulations that were originally published in VOLUME 34 (last year's) issues of the Administrative Register but had not yet gone into effect when the 2008 bound Volumes were published.

KRS Index A - 5

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 35 of the Administrative Register.

Subject Index A - 9

The Subject Index is a general index of administrative regulations published in VOLUME 35 of the Administrative Register, and is mainly broken down by agency.

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VOLUME 34

The administrative regulations listed under VOLUME 34 are those administrative regulations that were originally published in Volume 33 (last year's) issues of the Administrative Register but had not yet gone into effect when the 2007 bound Volumes were published.

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(Note: Emergency regulations expire 180 days from the date filed, or 180 days from the date filed plus number of days of requested extension, or upon replacement or repeal, whichever occurs first.)

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(Note: Emergency regulations expire 180 days from the date filed; or 180 days from the date filed plus number of days of requested extension, or upon replacement or repeal, whichever occurs first.)

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* Statement of Consideration not filed by deadline
** Withdrawn, not in effect within 1 year of publication
*** Withdrawn before being printed in Register
(r) Repealer regulation: KRS 13A.310-on the effective date of an administrative regulation that repeals another, the regulations compiler shall delete the repealed administrative regulation and the repealing administrative regulation.

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