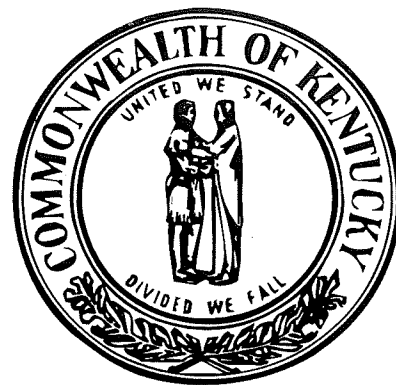


ADMINISTRATIVE REGISTER OF KENTUCKY



LEGISLATIVE RESEARCH COMMISSION
Frankfort, Kentucky

VOLUME 25, NUMBER 1
WEDNESDAY, JULY 1, 1998

July Agenda, ARRS	1
Regulation Review Procedure	4

NOTICES OF INTENT:

University of Kentucky – Agricultural Experiment Station	5
Board of Elections	11
Personnel Board	11
Revenue Cabinet	12
Board of Nursing	13
Department of Fish and Wildlife Resources	15
NREPC - Forestry	17
Justice Cabinet - Department of Corrections	18
Justice Cabinet – Juvenile Justice	19
Transportation Cabinet	19
Board of Education	23
Education Professional Standards Board	24
Commission on the Deaf and Hard of Hearing	24
Workforce Development Cabinet – Voc. Rehab.	25
Department of Alcoholic Beverage Control	26
Department of Insurance	27
Public Service Commission	27
Department of Housing, Buildings and Construction	28
Cabinets for Health Services, and Families and Children	29

EMERGENCIES:

Board of Elections	36
Transportation Cabinet	37
Cabinets for Health Services, and Families and Children	42

AS AMENDED:

Council on Postsecondary Education	51
Board of Dentistry	55
Real Estate Commission	57
Board of Nursing	60
Department of Fish and Wildlife Resources	62
NREPC – Surface Mining	63
Justice Cabinet – Parole Board	69
Board of Education	75
Education Professional Standards Board	76
Workforce Development Cabinet – Voc. Rehab.	78
Department of Financial Institutions	83
Cabinet for Families and Children	101

AMENDED AFTER HEARING:

Cabinet for Health Services	108
-----------------------------------	-----

PROPOSED AMENDMENTS RECEIVED THROUGH NOON, JUNE 15, 1998:

Justice Cabinet - Department of Corrections	125
Board of Education	127
Education Professional Standards Board	129
Workforce Development Cabinet – Voc. Rehab.	131
Workforce Development Cabinet – Dept. for the Blind	133

NEW ADMINISTRATIVE REGULATIONS RECEIVED THROUGH NOON, JUNE 15, 1998:

Finance and Administration Cabinet	139
Murray State University	139
Kentucky Assistive Technology Loan Corporation	147

June 9, 1998 Minutes of the ARRS	150
Other Committee Reports	159

CUMULATIVE SUPPLEMENT

Locator Index - Effective Dates	A2
KRS Index	A8
Subject Index	A9

MEETING NOTICE

The Administrative Regulation Review Subcommittee is **tentatively** scheduled to meet on July 14, 1998, at 10 a.m. in Room 149 of the Capitol Annex. See **tentative agenda** on pages 1-3 of this Administrative Register.

The **ADMINISTRATIVE REGISTER OF KENTUCKY** is the monthly supplement for the 1998 Edition of **KENTUCKY ADMINISTRATIVE REGULATIONS SERVICE**.

HOW TO CITE: Cite all material in the **ADMINISTRATIVE REGISTER OF KENTUCKY** by Volume number and Page number. Example: Volume 25, Kentucky Register, page 318 (short form: 25 Ky.R. 318).

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, or Major Function	Specific Regulation

ADMINISTRATIVE REGISTER OF KENTUCKY

(ISSN 0096-1493)

© 1998 Legislative Research Commission, All Rights Reserved

The Administrative Register of Kentucky is published monthly by the Legislative Research Commission, Frankfort, Kentucky 40601. Subscription rate, postpaid in the United States: \$48 (plus 6% Kentucky sales tax) per year for 12 issues, beginning in July and ending with the June issue of the subsequent year. Second class postage paid at Frankfort, Kentucky. POSTMASTER: Send address changes to Administrative Register of Kentucky, Room 64, State Capitol, Frankfort, Kentucky 40601.

KENTUCKY LEGISLATIVE RESEARCH COMMISSION

Chairmen

Senator Larry Saunders
Senate President

Representative Jody Richards
House Speaker

Senate and House Members

Senator Walter Blevins, Jr.
President Pro Tem

Representative Larry Clark
Speaker Pro Tem

Senator David K. Karem
Majority Floor Leader

Representative Gregory D. Stumbo
Majority Floor Leader

Senator Dan Kelly
Minority Floor Leader

Representative Danny R. Ford
Minority Floor Leader

Senator Nick Kafoglis
Majority Caucus Chairman

Representative Jim Callahan
Majority Caucus Chairman

Senator Richard L. "Dick" Roeding
Minority Caucus Chairman

Representative Stan Cave
Minority Caucus Chairman

Senator Fred Bradley
Majority Whip

Representative Joe Barrows
Majority Whip

Senator Elizabeth Tori
Minority Whip

Representative Woody Allen
Minority Whip

Don Cetrulo, Jr. Director

Samuel L. Hensley, Assistant Director for Education and Information

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE

Members

Representative John A. Arnold, Jr., Chairman
Senator Nick Kafoglis
Senator Joey Pendleton
Senator Richard L. "Dick" Roeding
Representative Woody Allen
Representative Jim Bruce
Representative Jimmie Lee

Staff

Susan Eastman
Gregory Karambellas
Donna Little
Stephen Lynn
Angela Phillips
Donna Valencia
Susan Wunderlich

VOLUME 25, NUMBER 1 – JULY 1, 1998

**ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE
TENTATIVE AGENDA – July 14, 1998 at 10:00 a.m. in Room 149, Capitol Annex**

(& E) - means that the emergency regulation has previously been reviewed by the subcommittee

STATE BOARD OF ELECTIONS

Forms and Procedures

31 KAR 4:120E. Additional precinct officers.

**FINANCE AND ADMINISTRATION CABINET
Office of Financial Management and Economic Analysis**

Kentucky Private Activity Bond Allocation Committee

200 KAR 15:010E. Formula for allocation of private activity bonds. (Deferred from June)

GENERAL GOVERNMENT CABINET

Real Estate Commission

201 KAR 11:011. Definitions for 201 KAR Chapter 11. (Not Amended After hearing) (Deferred from June)

201 KAR 11:170. Private school approval. (Not Amended After Hearing) (Deferred from June)

201 KAR 11:190. Rules of practice and procedure before the Kentucky Real Estate Commission.

201 KAR 11:230. Mandatory continuing education. (Not Amended After Hearing) (Deferred from June)

Real Estate Appraisers Board

201 KAR 30:050. Examination, education, and experience requirement.

KENTUCKY LOTTERY CORPORATION

Lottery

202 KAR 3:010. Code of ethics.

202 KAR 3:030. Retailer regulations.

**TOURISM DEVELOPMENT CABINET
Department of Fish and Wildlife Resources**

Game

301 KAR 2:041. Shooting preserves and foxhound training enclosures.

301 KAR 2:172. Deer hunting seasons and requirements.

301 KAR 2:174. Deer hunting zones.

301 KAR 2:176. Deer control tags.

301 KAR 2:178. Deer hunting on wildlife management areas.

301 KAR 2:230. Shoot-to-retrieve field trial permits and procedures.

Hunting and Fishing

301 KAR 3:022. License, tax and permit fees.

301 KAR 3:030. Year-round season for some birds and animals.

**DEPARTMENT OF AGRICULTURE
Division of Shows and Fairs**

Fairs and Shows

302 KAR 15:010. Administration, state aid to local fairs.

Livestock Sanitation

302 KAR 20:040E. Entry into Kentucky. (Deferred from June)

Pesticides

302 KAR 31:040. Storage and handling of pesticides and bulk fertilizer. (Deferred from May)

**NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division of Water**

Water Quality

401 KAR 5:002E. Definitions of terms for 401 KAR Chapter 5.

401 KAR 5:009E. Permits for swine feeding operations.

**JUSTICE CABINET
Department of State Police**

Sex Offender Registration System

502 KAR 31:010E. Sex Offender Registration System. (Deferred from May)

TRANSPORTATION CABINET

Professional Engineering and Related Services

600 KAR 6:050. Procurement bulletins and advertisement for selection of professional firms for engineering or related services.

600 KAR 6:060. Professional engineering service selection committee.

600 KAR 6:080. Financial records and audits of firms.

**Department of Vehicle Regulation
Division of Driver Licensing
Department of Administrative Services**

Administration

601 KAR 2:020 & E. Drivers' privacy protection.

VOLUME 25, NUMBER 1 – JULY 1, 1998

EDUCATION, ARTS, AND HUMANITIES CABINET
Department of Libraries and Archives

Libraries

725 KAR 2:080. Interstate Library Compact. (Deferred from June)

WORKFORCE DEVELOPMENT CABINET
Department of Vocational Rehabilitation

Administration

781 KAR 1:061. Repeal of 781 KAR 1:060.

Department for Employment Services
Division of Unemployment Insurance

Unemployment Insurance

787 KAR 1:210 & E. Employer contribution rates.

LABOR CABINET

Office of Labor Management Relations and Mediation

Kentucky Labor Management Matching Grant Program

803 KAR 6:010E. Kentucky Labor Management Matching Grant Program.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Insurance

Health Insurance Contracts

806 KAR 17:141E. Repeal of 806 KAR 17:140.

806 KAR 17:150E. Health benefit plan rate filing requirements.

Kentucky Racing Commission

Thoroughbred Racing (Deferred from June)

810 KAR 1:001. Definitions.

810 KAR 1:009. Jockeys and apprentices.

810 KAR 1:015. Claiming races.

810 KAR 1:016. Running of the race.

Harness Racing (Deferred from June)

811 KAR 1:090. Stimulants and drugs.

811 KAR 1:215. Kentucky Standardbred Development Fund.

Department of Housing, Buildings and Construction
Division of Building Codes Enforcement

Kentucky Building Code

815 KAR 7:105. Kentucky Building Code/1997.

CABINET FOR HEALTH SERVICES

Department for Public Health

Department for Public Health

Division of Local Health Department Operations

Local Health Departments

902 KAR 8:040. Definition of terms applicable for the personnel program for local health departments. (Not Amended After hearing)

902 KAR 8:060. Classification and compensation plans for local health departments of Kentucky. (Amended After Hearing)

902 KAR 8:070. Recruitment, examination, and certification of eligibles for local health departments of Kentucky. (Amended After Hearing)

902 KAR 8:080. Initial appointment, probationary period, layoffs, performance evaluation, and the resignation of employees of local health departments. (Amended After Hearing)

902 KAR 8:090. Promotion, transfer, and demotion of local health department employees. (Not Amended After Hearing)

902 KAR 8:100. Disciplinary procedures applicable for local health department employees. (Amended After Hearing)

902 KAR 8:110. Disciplinary appeal process applicable for local health department employees. (Not Amended After Hearing)

902 KAR 8:120. Leave provisions applicable to employees of local health departments. (Amended After Hearing)

902 KAR 8:130. Participation of local health department employees in political activities. (Not Amended After Hearing)

902 KAR 8:140. Appointment of a health officer or a health department director of a local health department. (Amended After Hearing)

Office of Inspector General

Health Services and Facilities (Deferred from May)

902 KAR 20:026. Operations and services; skilled nursing facilities. (Not Amended After Hearing)

902 KAR 20:048. Operations and services; nursing homes. (Not Amended After Hearing)

902 KAR 20:051. Operation and services; intermediate care. (Not Amended After Hearing)

902 KAR 20:180. Psychiatric hospitals; operation and services. (Amended After Hearing)

Division for Public Health Protection and Safety

Milk and Milk Products (Deferred from February)

902 KAR 50:031. Standards for producer eligibility for manufacturing grade milk.

902 KAR 50:032. Standards for farm requirements for manufacturing grade milk.

902 KAR 50:033. Standards for enforcement procedures for manufacturing grade milk.

Division of Public Health Protection and Safety

Radiology

902 KAR 100:010. Definitions.

VOLUME 25, NUMBER 1 – JULY 1, 1998

**CABINET FOR FAMILIES AND CHILDREN
Department for Social Services
Division of Family Services**

Day Care

905 KAR 2:160E. Child day care assistance program.

**CABINET FOR HEALTH SERVICES
Department for Medicaid Services
Division of Administration and Development**

Medicaid Services

907 KAR 1:006E. Coverage for persons eligible for Title XVIII benefits.
907 KAR 1:011E. Technical eligibility requirements.
907 KAR 1:022E. Nursing facility and intermediate facility for the mentally retarded services. (Deferred from May)
907 KAR 1:025E. Payment for nursing facility and intermediate facility for the mentally retarded services. (Deferred from May)
907 KAR 1:026E. Dental services.
907 KAR 1:560E. Medicaid hearing and appeals regarding eligibility. (Deferred from May)
907 KAR 1:563E. Medicaid covered services hearing appeals process for recipients. (Deferred from May)
907 KAR 1:595. Model Waiver II services and payments.
907 KAR 1:605E. Medicaid procedures for determining initial and continuing eligibility.
907 KAR 1:626E. Reimbursement of dental services.
907 KAR 1:640E. Income standards for Medicaid.
907 KAR 1:645E. Resource standards for Medicaid.
907 KAR 1:755E. Preadmission screening and resident review (PASRR) program. (Deferred from May)

Payment and Services

907 KAR 3:030 & E. Coverage and payments for Impact Plus services.

Department for Mental Health and Mental Retardation Services

Substance Abuse

908 KAR 1:311. Repeal of 908 KAR 1:010, 908 KAR 1:020, 908 KAR 1:030, 908 KAR 1:040, 908 KAR 1:050, 908 KAR 1:060, 908 KAR 1:070, 908 KAR 1:080, 908 KAR 1:090, 908 KAR 1:100, 908 KAR 1:110, 908 KAR 1:120, 908 KAR 1:130, 908 KAR 1:140, 908 KAR 1:150, 908 KAR 1:160, 908 KAR 1:170, 908 KAR 1:180, 908 KAR 1:190, 908 KAR 1:200, 908 KAR 1:210, 908 KAR 1:220, 908 KAR 1:230, 908 KAR 1:240, 908 KAR 1:250, and 908 KAR 1:260. (Public Hearing in May)

908 KAR 1:370. Licensing procedures and standards for persons and agencies operating alcohol and other drug abuse treatment programs. (Public Hearing in May)

Mental Health (Deferred from June)

908 KAR 2:190. Supported living services. (Amended After Hearing)
908 KAR 2:210E. Domestic violence offender treatment certification standards.

VOLUME 25, NUMBER 1 – JULY 1, 1998
ADMINISTRATIVE REGULATION REVIEW PROCEDURE
(See KRS Chapter 13A for specific provisions)

Notice of Intent

Administrative bodies shall file with the Regulations Compiler a Notice of Intent to promulgate an administrative regulation, including date, time and place of a public hearing on the subject matter to which the administrative regulation applies. This Notice of Intent, along with the public hearing information, shall be published in the Administrative Register. This Notice has to be filed and published in the Administrative Register, and the public hearing held or cancelled, prior to the filing of an administrative regulation.

After the scheduled hearing date, if held, the administrative body shall file with the Regulations Compiler a Statement of Consideration, setting forth a summary of the comments made at the public hearing, and the responses by the administrative body. This Statement shall not be published in the Administrative Register.

Filing and Publication

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

Public Hearing

The administrative body shall schedule a public hearing on proposed administrative regulations to be held not less than twenty (20) nor more than thirty (30) days following publication. The time, date, and place of the hearing and the name and address of the agency contact person shall be included on the last page of the administrative regulation when filed with the Compiler's office.

Any person interested in attending the scheduled hearing must submit written notification of such to the administrative body at least five working (5) days before the scheduled hearing. If no written notice is received at least five (5) working days before the hearing, the administrative body may cancel the hearing.

If the hearing is cancelled, the administrative body shall notify the Compiler of the cancellation. If the hearing is held, the administrative body shall submit within fifteen (15) days following the hearing a statement of consideration summarizing the comments received at the hearing and the administrative body's responses to the comments.

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

If a proposed administrative regulation is amended as a result of the public hearing, the amended version shall be published in the next Administrative Register; and the administrative regulation shall be reviewed by the Administrative Regulation Review Subcommittee at its next meeting following publication. If a proposed administrative regulation is not amended as a result of the hearing or if the hearing is cancelled, 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 thirty (30) days after being referred by LRC, whichever occurs first.

VOLUME 25, NUMBER 1 – JULY 1, 1998

NOTICES OF INTENT TO PROMULGATE ADMINISTRATIVE REGULATIONS
RECEIVED AS OF NOON, JUNE 15, 1998

UNIVERSITY OF KENTUCKY
Agricultural Experiment Station
Division of Regulatory Services

June 4, 1998

- (1) Regulation number and title: **12 KAR 2:031**. Directions and precautionary statements for feed with additives.
- (2) The Division of Regulatory Services intends to amend the administrative regulation governing the subject matter listed above.
- (3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for July 30, 1998, at 10 a.m. EDT, at the Division of Regulatory Services, Room 109, Regulatory Services Building, University of Kentucky, Lexington, Kentucky.
- (4)(a) The public hearing will be held if:
 1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and
 2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.
- (b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to July 30, 1998, the public hearing will be cancelled.
- (5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Wilbur W. Frye, Director, Division of Regulatory Services, 103 Regulatory Services Building, University of Kentucky, Lexington, Kentucky 40546-0275.
- (b) On a request for public hearing, a person shall state:
 1. "I agree to attend the public hearing."; or
 2. "I will not attend the public hearing."
- (6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.
- (b) Persons who wish to file this request may obtain a request form from the Division of Regulatory Services at the address listed above.
- (7) Information relating to the proposed administrative regulation:
 - (a) The statutory authority for the promulgation of an administrative regulation relating to the subject matter of administrative regulation is KRS 250.571.
 - (b) The administrative regulation that the Division of Regulatory Services intends to promulgate will amend 12 KAR 2:031, Directions; precautionary statements.
 - (c) The necessity and function of the proposed administrative regulation is as follows: KRS 250.571(1) authorizes the Director of the Agricultural Experiment Station to promulgate administrative regulations necessary for the efficient enforcement of KRS 250.491 to 250.631, regarding commercial feeds. This administrative regulation requires that directions for feeding and precautionary statements, if any, be provided to the purchaser of feed containing supplements or additives in order to ensure safe and effective use of the product.
 - (d) The benefits expected from the administrative regulation are:
 1. Purchasers of feed containing additives, such as drugs, special purpose additives, and nonnutritive additives, will be provided directions for use and cautioned about potential problems, if any, when feeding the product.
 2. Animal safety and food safety will be ensured.
 - (e) The administrative regulation will be implemented as follows: Through registration of products and subsequent inspections, sampling, and analyses, the Division of Regulatory Services will require proper labeling and regulate the feed in the manufacturing and marketing processes. The amended administrative regulation will be implemented immediately upon adoption.

June 4, 1998

- (1) Regulation number and title: **12 KAR 2:041**. Additives.
- (2) The Division of Regulatory Services intends to amend the administrative regulation governing the subject matter listed above.
- (3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for July 30, 1998, at 10 a.m. EDT, at the Division of Regulatory Services, Room 109, Regulatory Services Building, University of Kentucky, Lexington, Kentucky.
- (4)(a) The public hearing will be held if:
 1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and
 2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.
- (b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to July 30, 1998, the public hearing will be cancelled.
- (5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Wilbur W. Frye, Director, Division of Regulatory Services, 103 Regulatory Services Building, University of Kentucky, Lexington, Kentucky 40546-0275.
- (b) On a request for public hearing, a person shall state:
 1. "I agree to attend the public hearing."; or
 2. "I will not attend the public hearing."
- (6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.
- (b) Persons who wish to file this request may obtain a request form from the Division of Regulatory Services at the address listed above.
- (7) Information relating to the proposed administrative regulation:
 - (a) The statutory authority for the promulgation of an administrative regulation relating to the subject matter of administrative regulation is KRS 250.571.
 - (b) The administrative regulation that the Division of Regulatory Services intends to promulgate will amend 12 KAR 2:041, Additives.
 - (c) The necessity and function of the proposed administrative regulation is as follows: KRS 250.571(1) authorizes the Director of the Agricultural Experiment Station to promulgate administrative regulations necessary for the efficient enforcement of KRS 250.491 to 250.631, regarding commercial feeds. This administrative regulation defines adulterated commercial feeds and adulterated materials exempted from the definition of commercial feeds and states how they may be adulterated by additives.
 - (d) The benefits expected from the administrative regulation are: Feed manufacturers will be informed of the requirements for manufacturing safe, effective, and unadulterated feeds containing additives or supplements. Animal safety and food safety will be ensured.

VOLUME 25, NUMBER 1 – JULY 1, 1998

(e) The administrative regulation will be implemented as follows: Through registration of products and subsequent inspections, sampling, and analyses, the Division of Regulatory Services will require proper labeling and regulate the feed in the manufacturing and marketing processes. The amended administrative regulation will be implemented immediately upon adoption.

June 4, 1998

- (1) Regulation number and title: **12 KAR 2:046**. Poisonous and deleterious substances.
- (2) The Division of Regulatory Services intends to amend the administrative regulation governing the subject matter listed above.
- (3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for July 30, 1998, at 10 a.m. EDT, at the Division of Regulatory Services, Room 109, Regulatory Services Building, University of Kentucky, Lexington, Kentucky.
- (4)(a) The public hearing will be held if:
 1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and
 2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.
- (b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to July 30, 1998, the public hearing will be cancelled.
- (5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Wilbur W. Frye, Director, Division of Regulatory Services, 103 Regulatory Services Building, University of Kentucky, Lexington, Kentucky 40546-0275.
- (b) On a request for public hearing, a person shall state:
 1. "I agree to attend the public hearing."; or
 2. "I will not attend the public hearing."
- (6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.
- (b) Persons who wish to file this request may obtain a request form from the Division of Regulatory Services at the address listed above.
- (7) Information relating to the proposed administrative regulation:
 - (a) The statutory authority for the promulgation of an administrative regulation relating to the subject matter of administrative regulation is KRS 250.571.
 - (b) The administrative regulation that the Division of Regulatory Services intends to promulgate will amend 12 KAR 2:046, Poisonous and deleterious substances.
 - (c) The necessity and function of the proposed administrative regulation is as follows: KRS 250.571(1) authorizes the Director of the Agricultural Experiment Station to promulgate administrative regulations necessary for the efficient enforcement of KRS 250.491 to 250.631, regarding commercial feeds. This administrative regulation establishes requirements for the safe use of substances that might have deleterious effects if not fed according to accepted standards. It defines acceptable standards for deleterious substances in feed.
 - (d) The benefits expected from the administrative regulation are: Feed manufacturers are informed about standards for poisonous and deleterious substances. Purchasers are assured of animal safety, food safety, and environmental protection.
 - (e) The administrative regulation will be implemented as follows: Through registration of products and subsequent inspections, sampling, and analyses, the Division of Regulatory Services will require proper labeling and regulate the feed in the manufacturing and marketing processes. The amended administrative regulation will be implemented immediately upon adoption.

June 4, 1998

- (1) Regulation number and title: **12 KAR 2:051**. Manufacturing conditions.
- (2) The Division of Regulatory Services intends to amend the administrative regulation governing the subject matter listed above.
- (3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for July 30, 1998, at 10 a.m. EDT, at the Division of Regulatory Services, Room 109, Regulatory Services Building, University of Kentucky, Lexington, Kentucky.
- (4)(a) The public hearing will be held if:
 1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and
 2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.
- (b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to July 30, 1998, the public hearing will be cancelled.
- (5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Wilbur W. Frye, Director, Division of Regulatory Services, 103 Regulatory Services Building, University of Kentucky, Lexington, Kentucky 40546-0275.
- (b) On a request for public hearing, a person shall state:
 1. "I agree to attend the public hearing."; or
 2. "I will not attend the public hearing."
- (6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.
- (b) Persons who wish to file this request may obtain a request form from the Division of Regulatory Services at the address listed above.
- (7) Information relating to the proposed administrative regulation:
 - (a) The statutory authority for the promulgation of an administrative regulation relating to the subject matter of administrative regulation is KRS 250.571.
 - (b) The administrative regulation that the Division of Regulatory Services intends to promulgate will amend 12 KAR 2:051, Manufacturing conditions.
 - (c) The necessity and function of the proposed administrative regulation is as follows: KRS 250.571(1) authorizes the Director of the Agricultural Experiment Station to promulgate administrative regulations necessary for the efficient enforcement of KRS 250.491 to 250.631, regarding commercial feeds. This administrative regulation establishes current good manufacturing practices that are consistent with the Code of Federal Regulations for feeds containing drugs or antibiotics.
 - (d) The benefits expected from the administrative regulation are:
 1. Feed manufacturers will be informed about CGMPs and what is required to comply with them.
 2. Purchasers of feeds containing drugs or antibiotics will be more confident that proper dosages are being fed.
 3. Animal safety and food safety will be ensured.
 - (e) The administrative regulation will be implemented as follows: Through registration of products and subsequent inspections, sampling, and analyses, the Division of Regulatory Services will require proper labeling and regulate the feed in the manufacturing and marketing processes. The amended administrative regulation will be implemented immediately upon adoption.

VOLUME 25, NUMBER 1 – JULY 1, 1998

June 4, 1998

- (1) Regulation number and title: **12 KAR 2:056**. List of manufacturers.
- (2) The Division of Regulatory Services intends to amend the administrative regulation governing the subject matter listed above.
- (3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for July 30, 1998, at 10 a.m. EDT, at the Division of Regulatory Services, Room 109, Regulatory Services Building, University of Kentucky, Lexington, Kentucky.
- (4)(a) The public hearing will be held if:
 1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and
 2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.
- (b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to July 30, 1998, the public hearing will be cancelled.
- (5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Wilbur W. Frye, Director, Division of Regulatory Services, 103 Regulatory Services Building, University of Kentucky, Lexington, Kentucky 40546-0275.
- (b) On a request for public hearing, a person shall state:
 1. "I agree to attend the public hearing."; or
 2. "I will not attend the public hearing."
- (6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.
- (b) Persons who wish to file this request may obtain a request form from the Division of Regulatory Services at the address listed above.
- (7) Information relating to the proposed administrative regulation:
 - (a) The statutory authority for the promulgation of an administrative regulation relating to the subject matter of administrative regulation is KRS 250.571.
 - (b) The administrative regulation that the Division of Regulatory Services intends to promulgate will amend 12 KAR 2:056, List of manufacturers.
- (c) The necessity and function of the proposed administrative regulation is as follows: KRS 250.571(1) authorizes the Director of the Agricultural Experiment Station to promulgate administrative regulations necessary for the efficient enforcement of KRS 250.491 to 250.631, regarding commercial feeds. This administrative regulation requires the director to maintain a current listing of facilities manufacturing commercial feed in Kentucky in order to facilitate correspondence and collection of official feed samples.
- (d) The benefits expected from the administrative regulation are: The Division of Regulatory Services will maintain a current list of names and addresses of all feed manufacturing firms distributing feed in Kentucky which will enable the agency to provide education and assistance to feed manufacturers and effectively enforce the Commercial Feed Law and Regulations. Feed manufacturers will be protected from unfair competition from unregulated firms.
- (e) The administrative regulation will be implemented as follows: Through registration of products and subsequent inspections, sampling, and analyses, the Division of Regulatory Services will require proper labeling and regulate the feed in the manufacturing and marketing processes. The amended administrative regulation will be implemented immediately upon adoption.

June 4, 1998

- (1) Regulation number and title: **12 KAR 2:061**. Registration.
- (2) The Division of Regulatory Services intends to amend the administrative regulation governing the subject matter listed above.
- (3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for July 30, 1998, at 10 a.m. EDT, at the Division of Regulatory Services, Room 109, Regulatory Services Building, University of Kentucky, Lexington, Kentucky.
- (4)(a) The public hearing will be held if:
 1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and
 2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.
- (b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to July 30, 1998, the public hearing will be cancelled.
- (5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Wilbur W. Frye, Director, Division of Regulatory Services, 103 Regulatory Services Building, University of Kentucky, Lexington, Kentucky 40546-0275.
- (b) On a request for public hearing, a person shall state:
 1. "I agree to attend the public hearing."; or
 2. "I will not attend the public hearing."
- (6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.
- (b) Persons who wish to file this request may obtain a request form from the Division of Regulatory Services at the address listed above.
- (7) Information relating to the proposed administrative regulation:
 - (a) The statutory authority for the promulgation of an administrative regulation relating to the subject matter of administrative regulation is KRS 250.571.
 - (b) The administrative regulation that the Division of Regulatory Services intends to promulgate will amend 12 KAR 2:061, Registration.
- (c) The necessity and function of the proposed administrative regulation is as follows: KRS 250.571(1) authorizes the Director of the Agricultural Experiment Station to promulgate administrative regulations necessary for the efficient enforcement of KRS 250.491 to 250.631, regarding commercial feeds. This administrative regulation establishes the procedures for registering commercial feeds and manufacturers and the conditions that manufacturers shall meet to be granted an exemption from registration by the director.
- (d) The benefits expected from the administrative regulation are:
 1. The Division will have a record of and labels for feeds before being offered for sale in Kentucky.
 2. Feed labels will be reviewed for feed quality and regulatory compliance before the feed is offered for sale.
 3. Product inspection will be facilitated.
 4. Feed manufacturers will be protected from unfair competition from unregulated, low quality feeds.
- (e) The administrative regulation will be implemented as follows: Feed manufacturers will be informed of the requirements of this administrative regulation and proper registration of products will be monitored during routine inspections. Effective immediately upon adoption.

June 4, 1998

- (1) Regulation number and title: **12 KAR 2:066**. Suitability.
- (2) The Division of Regulatory Services intends to amend the administrative regulation governing the subject matter listed above.

VOLUME 25, NUMBER 1 – JULY 1, 1998

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for July 30, 1998, at 10 a.m. EDT, at the Division of Regulatory Services, Room 109, Regulatory Services Building, University of Kentucky, Lexington, Kentucky.

(4)(a) The public hearing will be held if:

1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and
2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to July 30, 1998, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Wilbur W. Frye, Director, Division of Regulatory Services, 103 Regulatory Services Building, University of Kentucky, Lexington, Kentucky 40546-0275.

(b) On a request for public hearing, a person shall state:

1. "I agree to attend the public hearing."; or
2. "I will not attend the public hearing."

(6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.

(b) Persons who wish to file this request may obtain a request form from the Division of Regulatory Services at the address listed above.

(7) Information relating to the proposed administrative regulation:

(a) The statutory authority for the promulgation of an administrative regulation relating to the subject matter of administrative regulation is KRS 250.571.

(b) The administrative regulation that the Division of Regulatory Services intends to promulgate will amend 12 KAR 2:066, Suitability.

(c) The necessity and function of the proposed administrative regulation is as follows: KRS 250.571(1) authorizes the Director of the Agricultural Experiment Station to promulgate administrative regulations necessary for the efficient enforcement of KRS 250.491 to 250.631, regarding commercial feeds. This administrative regulation establishes criteria that commercial feeds shall meet in order to be suitable for their intended purposes and determines the procedures for an affidavit attesting to the nutritional adequacy of a commercial feed.

(d) The benefits expected from the administrative regulation are: Purchasers will be assured that the feed ingredients and formulations are suitable for the intended animal specie and appropriate for the life stage of the animals.

(e) The administrative regulation will be implemented as follows: Through registration of products and subsequent inspections, sampling, and analyses, the Division of Regulatory Services will require proper labeling and regulate the feed in the manufacturing and marketing processes. The amended administrative regulation will be implemented immediately upon adoption.

June 4, 1998

(1) Regulation number and title: **12 KAR 3:012**. Uniform labeling format.

(2) The Division of Regulatory Services intends to amend the administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for July 30, 1998, at 10 a.m. EDT, at the Division of Regulatory Services, Room 109, Regulatory Services Building, University of Kentucky, Lexington, Kentucky.

(4)(a) The public hearing will be held if:

1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and
2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to July 30, 1998, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Wilbur W. Frye, Director, Division of Regulatory Services, 103 Regulatory Services Building, University of Kentucky, Lexington, Kentucky 40546-0275.

(b) On a request for public hearing, a person shall state:

1. "I agree to attend the public hearing."; or
2. "I will not attend the public hearing."

(6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.

(b) Persons who wish to file this request may obtain a request form from the Division of Regulatory Services at the address listed above.

(7) Information relating to the proposed administrative regulation:

(a) The statutory authority for the promulgation of an administrative regulation relating to the subject matter of administrative regulation is KRS 250.571.

(b) The administrative regulation that the Division of Regulatory Services intends to promulgate will amend 12 KAR 3:012, Uniform labeling format.

(c) The necessity and function of the proposed administrative regulation is as follows: KRS 250.571(1) authorizes the Director of the Agricultural Experiment Station to promulgate administrative regulations necessary for the efficient enforcement of KRS 250.491 to 250.631, regarding commercial feeds. This administrative regulation establishes a uniform format for presenting labeling information for pet foods and delineates criteria for product claims.

(d) The benefits expected from the administrative regulation are:

1. Pet food manufacturers will be informed about the format required in labeling their products.
2. Purchasers of pet foods are assured of standard information on labels, which will facilitate making purchasing decisions.

(e) The administrative regulation will be implemented as follows: Through registration of products and subsequent inspections, sampling, and analyses, the Division of Regulatory Services will require proper labeling and regulate the feed in the manufacturing and marketing processes. The amended administrative regulation will be implemented immediately upon adoption.

June 4, 1998

(1) Regulation number and title: **12 KAR 3:017**. Brand and product names.

(2) The Division of Regulatory Services intends to amend the administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for July 30, 1998, at 10 a.m. EDT, at the Division of Regulatory Services, Room 109, Regulatory Services Building, University of Kentucky, Lexington, Kentucky.

(4)(a) The public hearing will be held if:

1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and
2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to July 30, 1998, the public hearing will be cancelled.

VOLUME 25, NUMBER 1 – JULY 1, 1998

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Wilbur W. Frye, Director, Division of Regulatory Services, 103 Regulatory Services Building, University of Kentucky, Lexington, Kentucky 40546-0275.

(b) On a request for public hearing, a person shall state:

1. "I agree to attend the public hearing."; or
2. "I will not attend the public hearing."

(6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.

(b) Persons who wish to file this request may obtain a request form from the Division of Regulatory Services at the address listed above.

(7) Information relating to the proposed administrative regulation:

(a) The statutory authority for the promulgation of an administrative regulation relating to the subject matter of administrative regulation is KRS 250.571.

(b) The administrative regulation that the Division of Regulatory Services intends to promulgate will amend 12 KAR 3:017, Brand and product names.

(c) The necessity and function of the proposed administrative regulation is as follows: KRS 250.571(1) authorizes the Director of the Agricultural Experiment Station to promulgate administrative regulations necessary for the efficient enforcement of KRS 250.491 to 250.631, regarding commercial feeds. This administrative regulation establishes the conditions under which brand and product names may be used for pet foods.

(d) The benefits expected from the administrative regulation are:

1. Pet food manufacturers will have standard guidelines for labeling their products, fostering uniformity within the industry.
2. Purchasers of pet foods will not be misled by unfounded claims.

(e) The administrative regulation will be implemented as follows: Through registration of products and subsequent inspections, sampling, and analyses, the Division of Regulatory Services will require proper labeling and regulate the feed in the manufacturing and marketing processes. The amended administrative regulation will be implemented immediately upon adoption.

June 4, 1998

(1) Regulation number and title: **12 KAR 3:022. Guarantees.**

(2) The Division of Regulatory Services intends to amend the administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for July 30, 1998, at 10 a.m. EDT, at the Division of Regulatory Services, Room 109, Regulatory Services Building, University of Kentucky, Lexington, Kentucky.

(4)(a) The public hearing will be held if:

1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and
2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to July 30, 1998, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Wilbur W. Frye, Director, Division of Regulatory Services, 103 Regulatory Services Building, University of Kentucky, Lexington, Kentucky 40546-0275.

(b) On a request for public hearing, a person shall state:

1. "I agree to attend the public hearing."; or
2. "I will not attend the public hearing."

(6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.

(b) Persons who wish to file this request may obtain a request form from the Division of Regulatory Services at the address listed above.

(7) Information relating to the proposed administrative regulation:

(a) The statutory authority for the promulgation of an administrative regulation relating to the subject matter of administrative regulation is KRS 250.571.

(b) The administrative regulation that the Division of Regulatory Services intends to promulgate will amend 12 KAR 3:022, Guarantees.

(c) The necessity and function of the proposed administrative regulation is as follows: KRS 250.571(1) authorizes the Director of the Agricultural Experiment Station to promulgate administrative regulations necessary for the efficient enforcement of KRS 250.491 to 250.631, regarding commercial feeds. This administrative regulation requires a uniform format for expressing guarantees for pet foods.

(d) The benefits expected from the administrative regulation are:

1. Purchasers of pet foods will be assured that the products contain the nutrients, additives, and supplements in the amounts and forms claimed by the manufacturer.

2. Manufacturers of pet foods will be protected from unfair competition resulting from false nutritional claims.

3. The guarantees will provide a basis for analyses of the products by the Division of Regulatory Services.

(e) The administrative regulation will be implemented as follows: Through registration of products and subsequent inspections, sampling, and analyses, the Division of Regulatory Services will require proper labeling and regulate the feed in the manufacturing and marketing processes. The amended administrative regulation will be implemented immediately upon adoption.

June 4, 1998

(1) Regulation number and title: **12 KAR 3:027. Ingredients.**

(2) The Division of Regulatory Services intends to amend the administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for July 30, 1998, at 10 a.m. EDT, at the Division of Regulatory Services, Room 109, Regulatory Services Building, University of Kentucky, Lexington, Kentucky.

(4)(a) The public hearing will be held if:

1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and
2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to July 30, 1998, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Wilbur W. Frye, Director, Division of Regulatory Services, 103 Regulatory Services Building, University of Kentucky, Lexington, Kentucky 40546-0275.

(b) On a request for public hearing, a person shall state:

1. "I agree to attend the public hearing."; or
2. "I will not attend the public hearing."

VOLUME 25, NUMBER 1 – JULY 1, 1998

(6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.

(b) Persons who wish to file this request may obtain a request form from the Division of Regulatory Services at the address listed above.

(7) Information relating to the proposed administrative regulation:

(a) The statutory authority for the promulgation of an administrative regulation relating to the subject matter of administrative regulation is KRS 250.571.

(b) The administrative regulation that the Division of Regulatory Services intends to promulgate will amend 12 KAR 3:027, Ingredients.

(c) The necessity and function of the proposed administrative regulation is as follows: KRS 250.571(1) authorizes the Director of the Agricultural Experiment Station to promulgate administrative regulations necessary for the efficient enforcement of KRS 250.491 to 250.631, regarding commercial feeds. This administrative regulation establishes the maximum moisture content allowed and the required format for listing ingredients on the label of pet foods.

(d) The benefits expected from the administrative regulation are:

1. Purchasers of pet foods will be assured that reasonable limits are placed on the water content of the products they buy and that they can make informed choices based on the list of ingredients.

2. Pet food manufacturers will be protected from unfair competition related to feed ingredients and added water.

(e) The administrative regulation will be implemented as follows: Through registration of products and subsequent inspections, sampling, and analyses, the Division of Regulatory Services will require proper labeling and regulate the feed in the manufacturing and marketing processes. The amended administrative regulation will be implemented immediately upon adoption.

June 4, 1998

(1) Regulation number and title: **12 KAR 3:037. Additives.**

(2) The Division of Regulatory Services intends to amend the administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for July 30, 1998, at 10 a.m. EDT, at the Division of Regulatory Services, Room 109, Regulatory Services Building, University of Kentucky, Lexington, Kentucky.

(4)(a) The public hearing will be held if:

1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and

2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to July 30, 1998, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Wilbur W. Frye, Director, Division of Regulatory Services, 103 Regulatory Services Building, University of Kentucky, Lexington, Kentucky 40546-0275.

(b) On a request for public hearing, a person shall state:

1. "I agree to attend the public hearing."; or

2. "I will not attend the public hearing."

(6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.

(b) Persons who wish to file this request may obtain a request form from the Division of Regulatory Services at the address listed above.

(7) Information relating to the proposed administrative regulation:

(a) The statutory authority for the promulgation of an administrative regulation relating to the subject matter of administrative regulation is KRS 250.571.

(b) The administrative regulation that the Division of Regulatory Services intends to promulgate will amend 12 KAR 3:037, Additives.

(c) The necessity and function of the proposed administrative regulation is as follows: KRS 250.571(1) authorizes the Director of the Agricultural Experiment Station to promulgate administrative regulations necessary for the efficient enforcement of KRS 250.491 to 250.631, regarding commercial feeds. This administrative regulation ensures that drugs and additives used in pet foods are safe and effective for their intended purpose.

(d) The benefits expected from the administrative regulation are:

1. Purchasers of pet foods with additives, such as drugs, special purpose additives, and nonnutritive additives, will be confident that the additives have been provided in the proper amounts and forms to be effective and safe.

2. Animal safety will be ensured.

(e) The administrative regulation will be implemented as follows: Through registration of products and subsequent inspections, sampling, and analyses, the Division of Regulatory Services will require proper labeling and regulate the feed in the manufacturing and marketing processes. The amended administrative regulation will be implemented immediately upon adoption.

June 4, 1998

(1) Regulation number and title: **12 KAR 3:042. Statement of caloric content.**

(2) The Division of Regulatory Services intends to amend the administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for July 30, 1998, at 10 a.m. EDT, at the Division of Regulatory Services, Room 109, Regulatory Services Building, University of Kentucky, Lexington, Kentucky.

(4)(a) The public hearing will be held if:

1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and

2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to July 30, 1998, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Wilbur W. Frye, Director, Division of Regulatory Services, 103 Regulatory Services Building, University of Kentucky, Lexington, Kentucky 40546-0275.

(b) On a request for public hearing, a person shall state:

1. "I agree to attend the public hearing."; or

2. "I will not attend the public hearing."

(6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.

(b) Persons who wish to file this request may obtain a request form from the Division of Regulatory Services at the address listed above.

(7) Information relating to the proposed administrative regulation:

VOLUME 25, NUMBER 1 – JULY 1, 1998

(a) The statutory authority for the promulgation of an administrative regulation relating to the subject matter of administrative regulation is KRS 250.571.

(b) The administrative regulation that the Division of Regulatory Services intends to promulgate will amend 12 KAR 3:042, Statement of caloric content.

(c) The necessity and function of the proposed administrative regulation is as follows: KRS 250.571(1) authorizes the Director of the Agricultural Experiment Station to promulgate administrative regulations necessary for the efficient enforcement of KRS 250.491 to 250.631, regarding commercial feeds. This administrative regulation provides a uniform procedure for determining the caloric content of dog and cat food and for expressing it on product labels.

(d) The benefits expected from the administrative regulation are:

1. Pet food manufacturers will be informed of the standard method for calculating the caloric content of their products.

2. Purchasers will have information on the product label from which they can make confident purchasing decisions.

(e) The administrative regulation will be implemented as follows: Through registration of products and subsequent inspections, sampling, and analyses, the Division of Regulatory Services will require proper labeling and regulate the feed in the manufacturing and marketing processes. The amended administrative regulation will be implemented immediately upon adoption.

STATE BOARD OF ELECTIONS

May 20, 1998

(1) **31 KAR 4:130.** Submission of absentee ballot application by facsimile.

(2) The State Board of Elections intends to promulgate the administrative regulation cited above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for July 28, 1998 at 3 p.m., EST, at the offices of the State Board of Election, 140 Walnut Street, Frankfort, Kentucky.

(4)(a) The public hearing will be held if:

1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and

2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to July 28, 1998 the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should file their written request with the executive director at the following address: Mr. George Russell, State Board of Elections, 140 Walnut Street, Frankfort, Kentucky 40601, Phone: (502) 573-7100, Fax: (502) 573-4369.

(b) On a request for public hearing, a person shall state:

1. "I agree to attend the public hearing."; or

2. "I will not attend the public hearing."

(6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.

(b) Persons who wish to file this request may obtain a request form from the George Russell at the State Board of Elections at the address above.

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to the submission of an absentee ballot application by a facsimile is HB 587, enacted in the 1998 General Session.

(b) The administrative regulation the State Board of Elections intends to promulgate will allow certain absentee voters to request and receive an absentee ballot application by facsimile. The completed application can also then be sent to the county clerk by facsimile.

(c) The necessity and function of the proposed administrative regulation is as follows: This administrative regulation will fulfill a statutory mandate to allow certain absentee voters to request an absentee ballot by facsimile.

(d) The benefit expected from this administrative regulation is a more modernized and accessible absentee voting process to allow more absentee voters to participate in elections.

(e) The regulation will be implemented by the State Board of Elections, the County Boards of Elections and by the County Clerks. The implementing bodies will merely follow the process as outlined in the regulation and begin accepting faxed absentee ballot applications just as they would accept mailed absentee ballot applications.

KENTUCKY PERSONNEL BOARD

June 10, 1998

(1) Regulation number and title: **101 KAR 1:325** - Probationary periods.

(2) The Kentucky Personnel Board intends to promulgate an administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for July 23, 1998 at 9 a.m., 5 Fountain Place, Frankfort, Kentucky 40601.

(4)(a) The public hearing will be held if:

1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and

2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to July 23, 1998, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Mr. R. Hanson Williams, Executive Director, Kentucky Personnel Board, 28 Fountain Place, Frankfort, Kentucky 40601.

(b) On a request for public hearing, a person shall state:

1. "I agree to attend the public hearing."; or

2. "I will not attend the public hearing."

(6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.

(b) Persons who wish to file this request may obtain a request form from the Kentucky Personnel Board at the address listed above.

(7) Information relating to the proposed administrative regulation:

(a) The statutory authority for the promulgation of an administrative regulation relating to probationary periods is KRS Chapter 13A and 18A.0751.

VOLUME 25, NUMBER 1 – JULY 1, 1998

(b) The administrative regulation that the Kentucky Personnel Board intends to promulgate will amend 101 KAR 1:325, Probationary periods. Section 1(1) will be amended to delete the word 12th and substitute therefore the word "final". Section 1(2) will be amended to delete the following title codes, job classification and corresponding length of initial probationary periods: Title Code 2480, Water Patrol Officer; Title Code 3601, Alcoholic Beverage Enforcement Officer; Title Code 6248, Residential Facility Superintendent I; Title Code 6252, Residential Facility Superintendent II; Title Code 6250, Residential Facility Superintendent III; Section 1(2) will further be amended to add the following title codes, job classifications and length of initial probationary periods: Title Code 2201, Correctional Officer, 8 months; Title Code 2301, Arson Investigator, 12 months; Title Code 2305, Hazardous Devices Investigator, 12 months; Title Code 2330, MVE Officer, 12 months; Title Code 2468, Communications Dispatcher, 12 months; Title Code 3550, Insurance Fraud Investigator, 12 months; Title Code 3551, Insurance Fraud Investigator Senior, 12 months; Title Code 3552, Insurance Fraud Investigator Chief, 12 months; Title Code 3553, Insurance Fraud Investigator Supervisor, 12 months; Title Code 4051, Questioned Documents Examiner, 12 months; Title Code 4056, Firearms and Toolmark Examiner, 12 months; Title Code 4061, Forensic Serologist, 12 months; Title Code 4080, Forensic Anthropologist, 12 months; Title Code 4610, Vocational Rehabilitation Specialist I, 12 months; Title Code 4611, Vocational Rehabilitation Specialist II, 12 months; Title Code 4612, Vocational Rehabilitation Specialist III, 12 months; Title Code 4613, Vocational Rehabilitation Specialist IV, 12 months; Title Code 4614, Vocational Rehabilitation Specialist V, 12 months; Title Code 4620, Vocational Rehabilitation Administrator I, 12 months; Title Code 4621, Vocational Rehabilitation Administrator II, 12 months; Title Code 6253, Disability Determiner, 12 months; Title Code 6290, Administrative Hearing Officer, 12 months; Title Code 9885, Investigator, 12 months. Section 1(2) will also be amended to change the job classification name in the title codes as follows: Title Code 2001, changed from Fish and Wildlife Conservation Officer Trainee to Fish and Wildlife Law Enforcement Officer Trainee; and Title Code 2408, changed from MVE Trainee to Vehicle Inspector I. Section 1(5) will be deleted in its entirety;

(c) The necessity and function of the proposed administrative regulation is as follows: This regulation is needed to amend Section 1(1) and (2) to provide probationary periods for the classifications listed in (7)(b) above.

(d) The benefits expected from the proposed amendment to this regulation are: Provides for new initial probationary periods for 23 classifications listed in paragraph 7(b) above. It also amends the existing regulation to remove obsolete title codes, job classifications, and their corresponding initial probationary periods. This amendment further amends the existing regulation to change the job classification name for four (4) positions. These amendments are necessary to meet the agency needs and allow for longer probationary periods for the enumerated title codes and corresponding job classifications in order to allow sufficient time for a probationary employee to complete all initial training that is required to perform the duties of the employee's specific position.

(e) The administrative regulation will be implemented as follows: The successful completion of the initial probationary periods will be required in order to obtain status in the enumerated job classifications.

**REVENUE CABINET
Department of Law
Division of Tax Policy**

June 11, 1998

(1) **103 KAR 7:011.** Repeal of 103 KAR 7:010 and 103 KAR 7:020.

(2) The Revenue Cabinet intends to promulgate the administrative regulation cited above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for July 23, 1998, at 10 a.m., at 200 Fair Oaks Lane, Third Floor - Training Room A, Frankfort, Kentucky.

(4)(a) The public hearing will be held if:

1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and
2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to July 23, 1998, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Bruce McCutchen, Tax Consultant, Kentucky Revenue Cabinet, Division of Tax Policy, 200 Fair Oaks Lane, Third Floor, Frankfort, Kentucky 40620, (502) 564-6843, FAX: (502) 564-9565.

(b) On a request for public hearing, a person shall state:

1. "I agree to attend the public hearing."; or
2. "I will not attend the public hearing."

(6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.

(b) Persons who wish to file this request may obtain a request form from the Kentucky Revenue Cabinet at the address listed above.

(7) Information relating to the proposed administrative regulation:

(a) The statutory authority for the promulgation of an administrative regulation relating to the subject matter of this administrative regulation is KRS 131.130(1).

(b) The proposed administrative regulation will repeal 103 KAR 7: 010 and 103 KAR 7:020.

(c) The necessity and function of the proposed administrative regulation is as follows: 103 KAR 7:010 authorizes and directs property valuation administrators and their approved deputies to be present and inventory the contents when safe deposit boxes are opened under the provisions of KRS 140.250. It further authorizes and directs them to issue releases of inheritance tax liability in accordance with the Revenue Cabinet's instructions and procedures. Due to the elimination of the inheritance tax on inheritances received by Class A beneficiaries effective for deaths on or after July 1, 1998, it is no longer prudent or cost effective for the Revenue Cabinet to inventory safe deposit boxes since only a small percentage of the contents of these boxes will pass to beneficiaries that must pay inheritance tax (Classes B and C). 103 KAR 7:020 authorizes financial institutions to release or transfer certain funds without withholding an amount to cover any inheritance tax liability and without the necessity of acquiring the written consent of the Revenue Cabinet. Due to the elimination of the inheritance tax on inheritances received by Class A beneficiaries effective for deaths on or after July 1, 1998, it is no longer prudent or cost effective for the Revenue Cabinet to require financial institutions to acquire a specifically written consent from the Revenue Cabinet or to provide the written notice to the cabinet as required by this regulation.

(d) The benefits expected from the administrative regulation are:

1. The repeal of 103 KAR 7:010 and 103 KAR 7:020 will eliminate requirements and procedures that the Revenue Cabinet does not plan to utilize in the future.

VOLUME 25, NUMBER 1 – JULY 1, 1998

2. The benefits received by the Revenue Cabinet, the personal representatives, beneficiaries and the financial institutions will far exceed any loss in revenues due to the possible failure of the personal representative to report the contents of a safe deposit box or accounts on the inheritance and estate tax return.

(e) The administrative regulation will be implemented by the Division of Compliance and Taxpayer Assistance by no longer requiring a Property Valuation Administrator to be present at the initial opening of a safe deposit box after the death of an individual. Also, the Revenue Cabinet will not inventory safe deposit boxes or require specific consents for the transfer of property in the future and will grant written approval to transfer property as authorized in KRS 140.250 on accounts and the contents of safe deposit boxes of which decedents had access. Personal representatives and beneficiaries remain liable for any inheritance and estate tax that may be due on the accounts and contents of the safe deposit boxes.

BOARD OF NURSING

June 15, 1998

(1) **201 KAR 20:070.** Licensure by examination.

(2) The Board of Nursing intends to amend the administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for July 23, 1998 at 10 a.m. (EST) in the Boardroom, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky, 40222.

(4)(a) The public hearing will be held if:

1. It is requested in writing by at least five (5) persons, or an administrative body, or an association having at least five (5) members; and

2. A minimum of five (5) persons, or the administrative body or association, agree, in writing, to be present at the public hearing.

(b) If a request for a public hearing and agreement to attend the public hearing is not received at least ten (10) days prior to July 23, 1998, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Nathan Goldman, General Counsel, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222.

(b) On a request for public hearing, a person should state:

1. "I agree to attend the public hearing."; or

2. "I will not attend the public hearing."

(6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.

(b) Persons who wish to file this request may obtain a request form from the General Counsel, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222.

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to the regulation of nursing is KRS 314.131.

(b) The administrative regulation that the Board of Nursing intends to promulgate amends an existing regulation.

(c) The necessity and function of the proposed administrative regulation is as follows: To make technical amendments.

(d) The benefits expected from the administrative regulation are: To update the regulation and examination requirements.

(e) The administrative regulation will be implemented as follows: Through normal operating procedures.

June 15, 1998

(1) **201 KAR 20:091.** Repeal of 201 KAR 20:090.

(2) The Board of Nursing intends to amend the administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for July 23, 1998 at 10 a.m. (EST) in the Boardroom, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky, 40222.

(4)(a) The public hearing will be held if:

1. It is requested in writing by at least five (5) persons, or an administrative body, or an association having at least five (5) members; and

2. A minimum of five (5) persons, or the administrative body or association, agree, in writing, to be present at the public hearing.

(b) If a request for a public hearing and agreement to attend the public hearing is not received at least ten (10) days prior to July 23, 1998, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Nathan Goldman, General Counsel, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222.

(b) On a request for public hearing, a person should state:

1. "I agree to attend the public hearing."; or

2. "I will not attend the public hearing."

(6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.

(b) Persons who wish to file this request may obtain a request form from the General Counsel, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222.

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to the regulation of nursing is KRS 314.131.

(b) The administrative regulation that the Board of Nursing intends to promulgate repeals an existing regulation.

(c) The necessity and function of the proposed administrative regulation is as follows: To repeal 201 KAR 20:090. Temporary work permits. Temporary work permits for applicants for licensure by examination will no longer be issued. Temporary work permits for applicants for licensure by endorsement will be issued. The provisions for endorsement temporary work permits will be moved to 201 KAR 20:110.

(d) The benefits expected from the administrative regulation are: The elimination of the temporary work permit for exam applicants. With changes in the testing procedures, it is no longer needed.

(e) The administrative regulation will be implemented as follows: Following the effective date of the amended regulation, the exam temporary work permit will no longer be issued.

June 15, 1998

(1) **201 KAR 20:110.** Licensure by endorsement.

(2) The Board of Nursing intends to amend the administrative regulation governing the subject matter listed above.

VOLUME 25, NUMBER 1 – JULY 1, 1998

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for July 23, 1998 at 10 a.m. (EST) in the Boardroom, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky, 40222.

(4)(a) The public hearing will be held if:

1. It is requested in writing by at least five (5) persons, or an administrative body, or an association having at least five (5) members; and
2. A minimum of five (5) persons, or the administrative body or association, agree, in writing, to be present at the public hearing.

(b) If a request for a public hearing and agreement to attend the public hearing is not received at least ten (10) days prior to July 23, 1998, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Nathan Goldman, General Counsel, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222.

(b) On a request for public hearing, a person should state:

1. "I agree to attend the public hearing."; or
2. "I will not attend the public hearing."

(6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.

(b) Persons who wish to file this request may obtain a request form from the General Counsel, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222.

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to the regulation of nursing is KRS 314.131.

(b) The administrative regulation that the Board of Nursing intends to promulgate amends an existing regulation.

(c) The necessity and function of the proposed administrative regulation is as follows: To make technical amendments.

(d) The benefits expected from the administrative regulation are: To update the regulation and endorsement requirements.

(e) The administrative regulation will be implemented as follows: Through normal operating procedures.

June 15, 1998

(1) **201 KAR 20:240.** Fees for applications and services.

(2) The Board of Nursing intends to amend the administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for July 23, 1998 at 10 a.m. (EST) in the Boardroom, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky, 40222.

(4)(a) The public hearing will be held if:

1. It is requested in writing by at least five (5) persons, or an administrative body, or an association having at least five (5) members; and
2. A minimum of five (5) persons, or the administrative body or association, agree, in writing, to be present at the public hearing.

(b) If a request for a public hearing and agreement to attend the public hearing is not received at least ten (10) days prior to July 23, 1998, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Nathan Goldman, General Counsel, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222.

(b) On a request for public hearing, a person should state:

1. "I agree to attend the public hearing."; or
2. "I will not attend the public hearing."

(6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.

(b) Persons who wish to file this request may obtain a request form from the General Counsel, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222.

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to the regulation of nursing is KRS 314.131.

(b) The administrative regulation that the Board of Nursing intends to promulgate amends an existing regulation.

(c) The necessity and function of the proposed administrative regulation is as follows: To eliminate a separate examination retake fee and clarify the fee for certain services.

(d) The benefits expected from the administrative regulation are: All individuals taking the examination either for the first or subsequent times will be handled in the same manner and pay the same fees.

(e) The administrative regulation will be implemented as follows: Through normal operating procedures.

June 15, 1998

(1) **201 KAR 20:260.** Organization and administration standards for prelicensure programs of nursing.

(2) The Board of Nursing intends to amend the administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for July 23, 1998 at 10 a.m. (EST) in the Boardroom, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky, 40222.

(4)(a) The public hearing will be held if:

1. It is requested in writing by at least five (5) persons, or an administrative body, or an association having at least five (5) members; and
2. A minimum of five (5) persons, or the administrative body or association, agree, in writing, to be present at the public hearing.

(b) If a request for a public hearing and agreement to attend the public hearing is not received at least ten (10) days prior to July 23, 1998, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Nathan Goldman, General Counsel, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222.

(b) On a request for public hearing, a person should state:

1. "I agree to attend the public hearing."; or
2. "I will not attend the public hearing."

(6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.

(b) Persons who wish to file this request may obtain a request form from the General Counsel, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222.

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to the regulation of nursing is KRS 314.131.

(b) The administrative regulation that the Board of Nursing intends to promulgate amends an existing regulation.

VOLUME 25, NUMBER 1 – JULY 1, 1998

- (c) The necessity and function of the proposed administrative regulation is as follows: include the submission of a previously incorporated form in the nurse administrator's duties.
- (d) The benefits expected from the administrative regulation are: improved processing time of exam applications.
- (e) The administrative regulation will be implemented as follows: Through normal operating procedures.

June 15, 1998

- (1) **201 KAR 20:370.** Applications for licensure and registration.
- (2) The Board of Nursing intends to amend the administrative regulation governing the subject matter listed above.
- (3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for July 23, 1998 at 10 a.m. (EST) in the Boardroom, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky, 40222.
- (4)(a) The public hearing will be held if:
 - 1. It is requested in writing by at least five (5) persons, or an administrative body, or an association having at least five (5) members; and
 - 2. A minimum of five (5) persons, or the administrative body or association, agree, in writing, to be present at the public hearing.
- (b) If a request for a public hearing and agreement to attend the public hearing is not received at least ten (10) days prior to July 23, 1998, the public hearing will be cancelled.
- (5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Nathan Goldman, General Counsel, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222.
- (b) On a request for public hearing, a person should state:
 - 1. "I agree to attend the public hearing."; or
 - 2. "I will not attend the public hearing."
- (6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.
- (b) Persons who wish to file this request may obtain a request form from the General Counsel, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222.
- (7) Information relating to the proposed administrative regulation.
 - (a) The statutory authority for the promulgation of an administrative regulation relating to the regulation of nursing is KRS 314.131.
 - (b) The administrative regulation that the Board of Nursing intends to promulgate amends an existing regulation.
 - (c) The necessity and function of the proposed administrative regulation is as follows: To make technical amendments.
 - (d) The benefits expected from the administrative regulation are: To update the regulation.
 - (e) The administrative regulation will be implemented as follows: Through normal operating procedures.

**TOURISM DEVELOPMENT CABINET
Department of Fish and Wildlife Resources**

March 6, 1998

- (1) Regulation number and title: **301 KAR 1:090.** Bow fishing.
- (2) The Department of Fish and Wildlife Resources intends to amend the administrative regulations cited above.
- (3) A public hearing to receive oral and written comments on the proposed administrative regulations has been scheduled for July 21, 1998, at 9 a.m. in the Commission Room, Arnold L. Mitchell Building, at the Game Farm, five miles west of Frankfort on U.S. 60.
- (4)(a) The public hearing will be held if:
 - 1. It is requested, in writing, by at least five persons, or an administrative body, or an association having at least five members; and
 - 2. A minimum of five persons, or the administrative body or association agree, in writing, to be present at the public hearing.
- (b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least ten days prior to July 21, 1998, the public hearing will be canceled.
- (5)(a) Persons wishing to request a public hearing should mail their written request to John Wilson, Assistant Director, Public Affairs/Policy, Kentucky Department of Fish and Wildlife Resources, #1 Game Farm Road, Frankfort, Kentucky 40601.
- (b) In a request for a public hearing, a person shall state:
 - 1. "I agree to attend the public hearing"; or
 - 2. "I will not attend the public hearing."
- (6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.
- (b) Persons who wish to file this request may obtain a request from the department at the address listed above.
- (7) Information relating to the proposed administrative regulation.
 - (a) The statutory authority for the promulgation of this administrative regulation is KRS 150.025(1).
 - (b) The administrative regulation that the department intends to promulgate will amend 301 KAR 1:090 as follows: It will allow catfish to be taken by bow fishing at night, with a creel limit of five (5) catfish.
 - (c) The necessity and function of the proposed administrative regulation is: To regulate bow fishing to protect the fishery resource of the commonwealth.
 - (d) The benefits expected from the amendment to this administrative regulation is to increase recreational opportunities by allowing the taking of catfish at night.
 - (e) The Administrative regulation will be implemented as follows: Its provisions will be publicized through departmental publications and mass media outlets; it will be enforced by the department's Division of Law Enforcement.

June 12, 1998

- (1) Regulation number and title: **301 KAR 2:082.** Importing and holding exotic wildlife
- (2) The Department of Fish and Wildlife Resources intends to amend the administrative regulation cited above.
- (3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for July 21, 1998 at 9 a.m. in the Commission Room, Arnold L. Mitchell Building, at the Game Farm, five miles west of Frankfort on U.S. 60.
- (4)(a) The public hearing will be held if:
 - 1. It is requested, in writing, by at least five persons, or an administrative body, or an association having at least five members; and
 - 2. A minimum of five persons, or the administrative body or association agree, in writing, to be present at the public hearing.

VOLUME 25, NUMBER 1 – JULY 1, 1998

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least ten days prior to July 21, 1998, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to John Wilson, Assistant Director, Public Affairs/Policy, Kentucky Department of Fish and Wildlife Resources, #1 Game Farm Road, Frankfort, Kentucky 40601.

(b) In a request for a public hearing, a person shall state:

1. "I agree to attend the public hearing"; or
2. "I will not attend the public hearing."

(6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.

(b) Persons who wish to file this request may obtain a request from the department at the address listed above.

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of this administrative regulation is KRS 150.025(1), 150.180(6) and 150.280.

(b) The administrative regulation that the department intends to promulgate will amend 301 KAR 2:082 as follows: It will delete the list of dangerous animals from Section 3(2)(c). This list was incorporated into RS 98 HB 510.

(c) The necessity and function of the proposed administrative regulation is to establish the procedure for obtaining a transportation permit for exotic wildlife and to prohibit the importing or holding of exotic species that are potentially damaging to native ecosystems. This amendment is necessary to make the administrative regulation conform to statute.

(d) The benefits expected from the administrative regulation are control of potentially damaging exotic wildlife.

(e) The administrative regulation will be implemented as follows: Its provisions will be publicized through departmental publications and mass media outlets; it will be enforced by the department's Division of Law Enforcement.

Mach 6, 1998

(1) Regulation number and title: **301 KAR 2:179**. State park deer hunts.

(2) The Department of Fish and Wildlife Resources intends to promulgate an administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for July 21, 1998 at 9 a.m. in the Commission Room, Arnold L. Mitchell Building, at the Game Farm, five miles west of Frankfort on U.S. 60.

(4)(a) The public hearing will be held if:

1. It is requested, in writing, by at least five persons, or an administrative body, or an association having at least five members; and
2. A minimum of five persons, or the administrative body or association agree, in writing, to be present at the public hearing.

(b) If a request for a public hearing is not received from the required number of people at least ten days prior to July 21, 1998, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to John Wilson, Assistant Director, Public Affairs/Policy, Kentucky Department of Fish and Wildlife Resources, #1 Game Farm Road, Frankfort, Kentucky 40601.

(b) On the request for a public hearing, a person shall state:

1. "I agree to attend the public hearing"; or
2. "I will not attend the public hearing."

(6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.

(b) Persons who wish to file this request may obtain a request from the department at the address listed above.

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation an administrative regulation governing deer hunting on state parks is KRS 150.025(1) and 148.029(5)

(b) The administrative regulation that the department intends to promulgate will not amend an existing administrative regulation. It will establish dates and requirements for two days of limited deer hunting on Barren, Lake Cumberland, Greenbo Lake, Grayson Lake and Taylorsville Lake State Parks, and four days of limited deer hunting at Dale Hollow State Park, with hunters chosen by random drawings.

(c) The necessity and function of the proposed administrative regulation is remove excessive numbers of deer that are having adverse impacts on the ecosystems of several state parks.

(d) The benefit expected from the administrative regulation is to restore ecological balance to selected state park ecosystems by reducing deer numbers.

(e) The administrative regulation will be implemented as follows: Its provisions will be publicized through departmental publications and mass media outlets; it will be enforced by the department's Division of Law Enforcement and the Department of Parks.

June 12, 1998

(1) Regulation number and title: **301 KAR 3:900**. Repeal of 301 KAR 3:028

(2) The Department of Fish and Wildlife Resources intends to promulgate the administrative regulation cited above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for July 21, 1998 at 9 a.m. in the Commission Room, Arnold L. Mitchell Building, at the Game Farm, five miles west of Frankfort on U.S. 60.

(4)(a) The public hearing will be held if:

1. It is requested, in writing, by at least five persons, or an administrative body, or an association having at least five members; and
2. A minimum of five persons, or the administrative body or association agree, in writing, to be present at the public hearing.

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least ten days prior to July 21, 1998, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to John Wilson, Assistant Director, Public Affairs/Policy, Kentucky Department of Fish and Wildlife Resources, #1 Game Farm Road, Frankfort, Kentucky 40601.

(b) In a request for a public hearing, a person shall state:

1. "I agree to attend the public hearing"; or
2. "I will not attend the public hearing."

(6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.

(b) Persons who wish to file this request may obtain a request from the department at the address listed above.

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of this administrative regulation is KRS 150.195(1) and (4) and 1998 RS HB 654.

VOLUME 25, NUMBER 1 – JULY 1, 1998

(b) The administrative regulation that the department intends to promulgate will repeal 301 KAR 3:028, Applying for disability hunting and fishing exemptions.

(c) The necessity and function of the proposed administrative regulation is to repeal an administrative regulation made invalid by 1998 RS HB 654, which removed the license exemption for certain totally and permanently disabled residents.

(d) The benefits expected from the administrative regulation are bringing the department's administrative regulations into compliance with current statutes.

(e) The Administrative regulation will be implemented as follows: Its provisions will be publicized through departmental publications and mass media outlets; it will be enforced by the department's Division of Law Enforcement.

June 12, 1998

(1) Regulation number and title: **301 KAR 5:020**, License agent requirements and responsibilities; **301 KAR 5:030**, Purchasing licenses and obtaining replacement licenses.

(2) The Department of Fish and Wildlife Resources intends to amend the administrative regulation cited above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for July 21, 1998 at 9 a.m. in the Commission Room, Arnold L. Mitchell Building, at the Game Farm, five miles west of Frankfort on U.S. 60.

(4)(a) The public hearing will be held if:

1. It is requested, in writing, by at least five persons, or an administrative body, or an association having at least five members; and
2. A minimum of five persons, or the administrative body or association agree, in writing, to be present at the public hearing.

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least ten days prior to July 21, 1998, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to John Wilson, Assistant Director, Public Affairs/Policy, Kentucky Department of Fish and Wildlife Resources, #1 Game Farm Road, Frankfort, Kentucky 40601.

(b) In a request for a public hearing, a person shall state:

1. "I agree to attend the public hearing"; or
2. "I will not attend the public hearing."

(6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.

(b) Persons who wish to file this request may obtain a request from the department at the address listed above.

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of this administrative regulation is KRS 150.195(1) and (4) and 1998 RS HB 654.

(b) The administrative regulation that the department intends to promulgate will amend: 301 KAR 5:020 as follows: It will require that license agents record the number from a disability authorization card before selling a senior/disabled license to a person under the age of sixty-five (65). 301 KAR 5:030 as follows: It will:

1. Require that a person under the age of sixty-five (65) obtain a disability authorization card from the department and give the number from this card to a license agent before purchasing a senior/disabled license.
2. Establish the procedure for obtaining a disability authorization card from the department, and
3. Require persons hunting or fishing with a senior/disabled license to carry proof of age and residency or, if under age sixty-five (65) the disability authorization card in addition to the license.

(c) The necessity and function of the proposed administrative regulation is to establish the procedures for obtaining and using the senior/disabled license authorized by 1998 RS HB 654.

(d) The benefits expected from the administrative regulation are a means of verifying disability status before a license is issued and a way of minimizing abuses of the senior/disabled license.

(e) The administrative regulation will be implemented as follows: Its provisions will be publicized through departmental publications and mass media outlets; it will be enforced by the department's Division of Law Enforcement.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET Division of Forestry

June 15, 1998

(1) Regulation number and title:

(a) **402 KAR 3:020**. Education and training requirements for the Master Logger Program. The subject matter of this administrative regulation is the education and training requirements, length of training session, fee, continuing education requirements, and revocation of certificate for the Master Logger Program.

(b) **402 KAR 3:030**. The Kentucky Agriculture Water Quality Plan Document. The subject matter of this administrative regulation is the incorporation by reference of Best Management Practices, Section 1, Silviculture, contained in "The Kentucky Agriculture Water Quality Plan," dated October 23, 1996, at pages 12-39.

(2) The Natural Resources and Environmental Protection Cabinet intends to promulgate new administrative regulations governing the subject matter listed in item (1) above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulations has been scheduled for Friday, July 24, 1998, at 10 a.m. eastern time, in the Conference Room of the Department for Natural Resources at 663 Teton Trail, Frankfort, Kentucky.

(4)(a) The public hearing will be held if:

1. It is requested, in writing, by at least five (5) persons, or an administrative body, or an association having at least five (5) members; and
2. A minimum of five (5) persons, or the administrative body or association, agree, in writing, to be present at the public hearing.

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to July 24, 1998, the public hearing will be cancelled.

(c) Written comments may be submitted to the address listed in item (5)(a) below, until 4:30 p.m. eastern time on Friday, July 24, 1998, regardless of whether a public hearing is requested or held.

(5)(a) Persons wishing to request a public hearing, or to submit written comments, should mail their written request or written comments to the following address: Larry Lowe, FRU Forestry Program Coordinator, Division of Forestry, 627 Comanche Trail, Frankfort, Kentucky 40601, Telephone (502) 564-4496, FAX (502) 564-6553.

(b) On a request for a public hearing, a person shall state:

1. "I agree to attend the public hearing."; or

VOLUME 25, NUMBER 1 – JULY 1, 1998

2. "I will not attend the public hearing."
- (6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.
- (b) Persons who wish to file this request for notices pertaining to administrative regulations of the Department for Natural Resources may obtain a request form by contacting the Division of Forestry at the following address: Fawn Pace, Division of Forestry, 627 Comanche Trail, Frankfort, Kentucky 40601, Telephone (502) 564-4496.
- (7) Information relating to proposed administrative regulation 402 KAR 3:020.
- (a) The statutory authority for the proposed administrative regulation is 1998 Ky. Acts ch. 555.
- (b) The proposed administrative regulation will not amend an existing regulation. It will specify the education and training requirements for the Master Logger Program and the requirements for continuing education, and will establish a fee.
- (c) The necessity and function of the proposed administrative regulation are as follows: This administrative regulation is necessary to implement the statute requirement that on every timber harvesting operation there be one logger in charge of the harvest who has successfully completed the Master Logger Program. The statute requires the cabinet to specify the education, training, and continuing education requirements of the Master Logger Program, and to establish a basic fee. The statute authorizes the cabinet to promulgate administrative regulations as necessary to implement the statute. This administrative regulation is necessary to establish specific requirements and procedures to properly implement the provisions of the statute.
- (d) The expected benefits from this administrative regulation are consistency and clarity of the requirements of the master logger program. The existing Master Logger Program training and education requirements will be incorporated into this administrative regulation.
- (e) This administrative regulation will be implemented through the cabinet's existing organizational structure in the Division of Forestry.
- (8) Information relating to proposed administrative regulation 402 KAR 3:030.
- (a) The statutory authority for the proposed administrative regulation is 1998 Ky. Acts ch. 555.
- (b) The proposed administrative regulation will not amend an existing regulation. It will incorporate by reference Best Management Practices, Section 1, Silviculture, pages 12-39, of a manual entitled "The Kentucky Agriculture Water Quality Plan," dated October 23, 1996. The section of the manual being incorporated by reference addresses best management practices for silviculture.
- (c) The necessity and function of the proposed administrative regulation are as follows: This administrative regulation is necessary to implement the statute requirement that two years from the effective date of the statute, all loggers or operators engaged in the conduct of any timber harvesting operations shall use appropriate best management practices. "Best management practices" is defined by the statute as effective, practical, economical, structural, or nonstructural methods that prevent or reduce the movement of sediment, nutrients, pesticides, and other pollutants from the land to surface or groundwater, or that otherwise protect water quality from potential adverse effects of timber harvesting operations as developed by the Division of Forestry and approved by the Agriculture Water Quality Authority. The statute authorizes the cabinet to promulgate administrative regulations as necessary to implement the statute. The manual "The Kentucky Agriculture Water Quality Plan" contains the best management practices developed by the Division of Forestry and approved by the Agriculture Water Quality Authority.
- (d) The expected benefits from this administrative regulation are clarity and conformity to the statute.
- (e) This administrative regulation will be implemented through the cabinet's existing organizational structure in the Division of Forestry.

JUSTICE CABINET
Department of Corrections

June 12, 1998

- (1) Regulation number and title: **501 KAR 8:011**, Department of Corrections.
- (2) The Justice Cabinet, Department of Corrections, intends to promulgate an administrative regulation governing the subject matter listed above.
- (3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for July 21, 1998, at 9 a.m., in the Auditorium, in the State Office Building, Frankfort, Kentucky 40601.
- (4)(a) The public hearing will be held if:
1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and
 2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.
- (b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to July 21, 1998, the public hearing will be canceled.
- (5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Justice Cabinet, Department of Corrections, Office of General Counsel, Room 200, State Office Building, Frankfort, Kentucky 40601.
- (b) On a request for public hearing, a person shall state:
1. "I agree to attend the public hearing."; or
 2. "I will not attend the public hearing."
- (6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.
- (b) Persons who wish to file this request may obtain a request form from the Department of Corrections at the address listed above.
- (7) Information relating to the proposed administrative regulation:
- (a) The statutory authority for the promulgation of this administrative regulation relating to the subject matter of this administrative regulation is KRS 196.035 and 197.020.
- (b) The administrative regulation that the Department of Corrections intends to promulgate will amend 501 KAR 8:011, as follows: 501 KAR 8:010, Execution hearings, is being repealed as a newly enacted section of statute KRS Chapter 431 sets forth the procedure for handling a claim that the condemned is mentally incapable of being executed.
- (c) The necessity and function of the proposed administrative regulation is as follows: KRS 196.035, 197.020, 439.470, 439.590, and 439.640 authorizes the commissioner to promulgate administrative regulations necessary and suitable for the proper administration of the department or any division therein. These policies and procedures are incorporated by reference in order to comply with the accreditation standards of the American Correctional Association.
2. This administrative regulation updates operating procedures at the Department of Corrections to comply with KRS Chapter 13A and to reflect current operating procedures.
- (d) The benefits expected from this administrative regulation are: To comply with KRS Chapter 13A and to codify current operating procedures.

VOLUME 25, NUMBER 1 – JULY 1, 1998

(e) This administrative regulation will be implemented as follows: Staff will comply with operational procedures and standards noted in policy changes.

Department of Juvenile Justice

June 5, 1998

- (1) **505 KAR 1:040**, Department of Juvenile Justice Policies and Procedures Manual.
- (2) The Department of Juvenile Justice intends to promulgate an administrative regulation governing the subject matter listed above.
- (3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for July 28, 1998, at 10 a.m. in the Department of Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky.
- (4)(a) The public hearing will be held if:
 1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and
 2. A minimum of 5 persons, or the administrative body or association agree, in writing, to be present at the public hearing.
- (b) If a request for a public hearing and agreement to attend the public hearing are not received from the required number of people at least 10 days prior to July 28, 1998, the public hearing will be cancelled.
- (5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Department of Juvenile Justice, Office of General Counsel, 1025 Capital Center Drive, Capital Complex East, Building #3, Third Floor, Frankfort, Kentucky, 40601.
- (b) On a request for a public hearing, a person shall state:
 1. "I agree to attend the public hearing."; or
 2. "I will not attend the public hearing."
- (6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.
- (b) Persons who wish to file this request may obtain a request form from the Department of Juvenile Justice at the address listed above.
- (7) Information relating to the proposed administrative regulation:
 - (a) The statutory authority for the promulgation of an administrative regulation relating to 505 KAR 1:040, Department of Juvenile Justice Policies and Procedures Manual, is KRS 15A.160, 15A.210, 605.150, 610.267, Chapter 635 et seq., 640.120, 645.250, and the requirements of a consent decree entered December 4, 1995, in United States of America v. Commonwealth of Kentucky, et. al., Civil Action No. 3:95 CV-757-S (W.D. Ky. 1995), as well as EO 96-1576.
 - (b) The administrative regulation that the Department of Juvenile Justice intends to promulgate will amend 505 KAR 1:040. It will amend existing policies and procedures of the Department of Juvenile Justice as well as implementing new policies and procedures and some of the provisions of the voluntary consent decree entered into with the Department of Justice to improve conditions for youth housed in thirteen residential treatment facilities.
 - (c) The necessity and function of the proposed administrative regulation is as follows: KRS 15A.160 authorizes the Department of Juvenile Justice to adopt regulations as are necessary to implement programs mandated by federal law or to qualify for receipt of federal funds, and as are necessary to cooperate with federal agencies for the proper administration of the cabinet and its programs. This administrative regulation is promulgated to incorporate into regulatory form, by reference, and update materials used by the department in the implementation of a statewide social service program.
 - (d) The benefits expected from the administrative regulation are: The department will have continued to establish regulatory authority for the current policies and procedures relating to management procedures, support services, benefits to families and children, and youth services, and will have continued to comply with some of the provisions of the voluntary consent decree entered into with the Department of Justice in December 1995 to improve conditions for youth housed in thirteen residential treatment facilities.
 - (e) The administrative regulation will be implemented as follows: Staff will comply with the policies and procedures noted in policy changes.

TRANSPORTATION CABINET

June 1, 1998

- (1) **600 KAR 3:030**, Relocation or reconstruction of utility and rail facilities.
- (2) The Kentucky Transportation Cabinet intends to promulgate a new administrative regulation 600 KAR 3:030 governing the audit of costs incurred by utility and railroad companies in their relocation of facilities as part of a highway construction project.
- (3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for July 23, 1998 at 10 a.m. local prevailing time, in the 4th Floor Hearing/Conference Room of the State Office Building, at 501 High Street, Frankfort, Kentucky 40622.
- (4)(a) The public hearing will be held if:
 1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and
 2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.
- (b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to July 23, 1998 the public hearing will be canceled.
- (5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Sandra Pullen Davis, State Office Building, Mail Code 10-13, 501 High Street, Frankfort, Kentucky 40622. The fax number is (502) 564-5238.
- (b) On a request for public hearing, a person shall state:
 1. "I agree to attend the public hearing."; or
 2. "I will not attend the public hearing."
- (6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.
- (b) Persons who wish to file this request may obtain a request form from the Transportation Cabinet at the address listed above.
- (7) Information relating to the proposed administrative regulation:
 - (a) The statutory authority for the promulgation of this administrative regulation are federal regulations 23 CFR Parts 645, 646 Subpart B, and 140 Subpart 1.
 - (b) The administrative regulation that the Transportation Cabinet intends to promulgate will be a new administrative regulation.
 - (c) The necessity, function, and conformity of the proposed administrative regulation is as follows: During the course of most highway construction projects, utilities and/or railroads need to be relocated or reconstructed. Since the owners of these public utilities are better

VOLUME 25, NUMBER 1 – JULY 1, 1998

equipped to perform the relocation or reconstruction than the Department of Highways, the Department of Highways will agree to reimburse the utility or railroad company for the cost incurred in the construction project. In order to establish that the costs to be reimbursed were a necessary part of the highway construction project, the Transportation Cabinet performs audits of the reimbursement requests. The recordkeeping requirements and audit standards for all federal-aid projects are set forth in 23 CFR Part 645. This administrative regulation sets forth the reimbursement eligible items, the recordkeeping requirements, and the audit standards for a utility or railroad relocation or reconstruction project which is a part of a highway construction project. The state standards are compatible with the federal requirements. The provisions of this administrative regulation will be applicable to both federal-aid and nonfederal aid highway construction projects.

(d) The benefit expected from this administrative regulation is advance notice to the utility and railroad companies of the recordkeeping and audit requirements so that there will be no confusion. All parties involved should then have a complete and accurate accounting of all costs that pertain to the relocation or reconstruction of utility or rail facilities. By requiring the same standards for federal and nonfederal aid projects, the Transportation Cabinet is simplifying procedures for the utility and rail companies.

(e) The new administrative regulation will be implemented by informing all utility and railroad companies of the recordkeeping requirements at the time of the contract with the company.

(8) If you have a disability for which the Transportation Cabinet needs to provide accommodations, please notify us of your requirements by July 13, 1998. This request does not have to be in writing. This notice can be provided in an alternate format upon request.

June 15, 1998

(1) **601 KAR 1:005** relating to the federal motor carrier safety regulations.

(2) The Kentucky Transportation Cabinet intends to promulgate an administrative regulation updating the adopted federal regulations governing the safe operation of commercial motor vehicles in Kentucky. The remainder of the administrative regulation will be reviewed at the same time to insure continued compliance with state and federal laws.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for July 23, 1998 at 3 p.m. local prevailing time, at 501 High Street, 4th Floor Hearing/Conference Room, Frankfort, Kentucky 40622.

(4)(a) The public hearing will be held if:

1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and
2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to July 23, 1998, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Sandra Pullen Davis, 501 High Street, 10th Floor Mail Code 10-13, State Office Building, Frankfort, Kentucky 40622.

(b) On a request for public hearing, a person shall state:

1. "I agree to attend the public hearing."; or
2. "I will not attend the public hearing."

(6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.

(b) Persons who wish to file this request may obtain a request form from the Transportation Cabinet at the address listed above.

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to the safety of commercial motor vehicles and their operators is KRS 138.665, 281.600, 281.730, 281.750, and Title 49 CFR Parts 40, 382-383, 385, and 390-397.

(b) The administrative regulation that the Transportation Cabinet intends to promulgate will amend an existing administrative regulation.

(c) The necessity and function of the proposed administrative regulation is as follows: This administrative regulation is necessary to set forth the safety requirements that KRS 281.600 allows the Transportation Cabinet to establish. Further, these safety requirements are imposed by U.S. DOT on commercial vehicles operating in interstate commerce and most commercial vehicles operating in intrastate commerce. By promulgating these federal regulations in a state administrative regulation, the Transportation Cabinet's motor vehicle enforcement officers can enforce the federal regulations as required by federal mandate.

(d) The benefits expected are increased safety on the public highways of Kentucky and uniformity with the federal government and other states' motor carrier safety requirements.

(8) Any person with a disability for which the Transportation Cabinet needs to make an accommodation in order for the person to participate in the public comment hearing should notify Sandra Pullen Davis at the above-mentioned address no later than July 13, 1998.

June 1, 1998

(1) **601 KAR 1:025**, Transportation of hazardous materials by air or highway.

(2) The Kentucky Transportation Cabinet intends to promulgate an administrative regulation governing the transportation of hazardous materials within Kentucky. The administrative regulation will adopt the latest changes to the federal hazardous materials regulations that have been published in the "Federal Register".

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for July 23, 1998 at 9 a.m. local prevailing time, at 501 High Street, 4th Floor Hearing/Conference Room of the State Office Building, Frankfort, Kentucky 40622.

(4)(a) The public hearing will be held if:

1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and
2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to July 23, 1998, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Sandra Pullen Davis, 501 High Street, Mail Code 10-13, State Office Bldg., Frankfort, Kentucky 40622. The fax number is (502) 564-5238.

(b) On a request for public hearing, a person shall state:

1. "I agree to attend the public hearing."; or
2. "I will not attend the public hearing."

(6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.

(b) Persons who wish to file this request may obtain a request form from the Transportation Cabinet at the address listed above.

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of this administrative regulation is KRS 174.410(2), 174.430(1), 49 CFR Parts 130, 171-180.

VOLUME 25, NUMBER 1 – JULY 1, 1998

(b) The administrative regulation that the Transportation Cabinet intends to promulgate will amend an existing administrative regulation.

(c) The necessity and function of the proposed administrative regulation is as follows: KRS 174.410(2) provides that the Secretary of the Transportation Cabinet in consultation with the Secretary of the Natural Resources and Environmental Protection Cabinet and the Secretary of Cabinet for Health Services (formerly Cabinet for Human Resources), shall adopt by reference or in its entirety, the federal hazardous materials transportation regulation, 49 CFR (1978), as amended, to effectively carry out the intent of KRS 174.400 through 174.435 relating to the transportation of hazardous material by air or highway. Further, the U.S. Department of Transportation requires that each state enforce the federal requirements. This administrative regulation adopts the federal regulations relating to the transportation of hazardous materials.

(d) The benefit expected from this administrative regulation is consistency with the federal requirements for the transportation of hazardous materials.

(e) The Transportation Cabinet will implement this change to the administrative regulation by training the Motor Vehicle Enforcement Officers in the changes to the hazardous material transportation regulations so that they will know what to look for.

(8) If you have a disability for which the Transportation Cabinet needs to provide accommodations, please notify us of your requirements by July 15, 1998. This request does not have to be in writing. This notice can be provided in an alternate format upon request.

June 15, 1998

(1) New administrative regulation **601 KAR 1:210** relating to the requirement that commercial vehicles stop at weigh stations.

(2) The Kentucky Transportation Cabinet intends to promulgate a new administrative regulation setting forth which commercial vehicles are required to stop at an open weigh station. The cabinet further intends to establish when a commercial vehicle can be driven past a weigh station without stopping. This will include the test/pilot programs currently underway using electronic transponders which allow some commercial motor vehicles to bypass a weigh station without stopping.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for July 23, 1998 at 3 p.m. local prevailing time, at 501 High Street, 4th Floor Hearing/Conference Room, Frankfort, Kentucky 40622.

(4)(a) The public hearing will be held if:

1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and

2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to July 23, 1998, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Sandra Pullen Davis, 501 High Street, 10th Floor Mail Code 10-13, State Office Building, Frankfort, Kentucky 40622.

(b) On a request for public hearing, a person shall state:

1. "I agree to attend the public hearing."; or

2. "I will not attend the public hearing."

(6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.

(b) Persons who wish to file this request may obtain a request form from the Transportation Cabinet at the address listed above.

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to commercial vehicles stopping at weigh stations is KRS 189.223, 189.227, and 281.600.

(b) The administrative regulation that the Transportation Cabinet intends to promulgate will be a new administrative regulation, 601 KAR 1:210. It will establish which commercial vehicles are required to stop at weigh stations.

(c) The necessity, function, and conformity of the proposed administrative regulation is as follows: KRS 189.227 authorizes the Transportation Cabinet to establish administrative regulations allowing peace officers to weigh or measure trucks and to establish who owns the truck. In addition, the federal motor carrier safety regulations which are adopted in 601 KAR 1:005 and authorized by KRS 281.600 require the Transportation Cabinet to inspect commercial motor vehicles for safety purposes.

(d) The benefits expected from the administrative regulation are a clear understanding between the Transportation Cabinet and the motor carrier industry of the vehicles which are required to stop at weigh stations.

(e) The administrative regulation will be implemented as follows: Signs placed in advance of the entrance to the weigh stations will clearly spell out which vehicles are required to stop.

(8) Any person with a disability for which the Transportation Cabinet needs to make an accommodation in order for the person to participate in the public comment hearing should notify Sandra Pullen Davis at the above-mentioned address no later than July 13, 1998.

June 15, 1998

(1) **603 KAR 4:035**, Logo signs; placement along Kentucky's fully controlled limited access highways.

(2) The Kentucky Transportation Cabinet intends to promulgate an administrative regulation which amends 603 KAR 4:035. The 1998 General Assembly amended the governing statutes to allow the placement of logos on partially controlled access highways as well as fully controlled access highways. In addition, the Transportation Cabinet's contractor in the program would like the cabinet to consider a fee increase. The fee has been the same since the beginning of the logo program in the early 1980's.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for July 23, 1998, at 1:30 p.m. local prevailing time, at 501 High Street, 4th Floor Hearing/Conference Room, Frankfort, Kentucky 40622.

(4)(a) The public hearing will be held if:

1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and

2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to July 23, 1998, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Sandra Pullen Davis, 501 High Street, State Office Building, Mail Code 10-13, Frankfort, Kentucky 40622.

(b) On a request for public hearing, a person shall state:

1. "I agree to attend the public hearing."; or

2. "I will not attend the public hearing."

(6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.

(b) Persons who wish to file this request may obtain a request form from the Transportation Cabinet at the address listed above.

(7) Information relating to the proposed administrative regulation.

VOLUME 25, NUMBER 1 – JULY 1, 1998

(a) The statutory authority for the promulgation of an administrative regulation relating to the logo program is KRS 177.0734 through 177.0738.

(b) The administrative regulation that the Transportation Cabinet intends to promulgate will amend an existing administrative regulation, 603 KAR 4:035.

(c) The necessity, function, and conformity of the proposed administrative regulation is as follows: KRS 177.0734 through 177.0738 require the Commissioner of Highways to prescribe by administrative regulations reasonable standards for the erection of specific information panels within highway rights-of-way to provide directional information for business establishments offering goods and services in the interest of the traveling public. This administrative regulation sets forth the criteria to be followed in the erection and maintenance of specific motorist signing designed to inform motorists where travel related goods and services are available.

(d) The benefits expected are increased signage for tourist activities.

(e) The change to the administrative regulation will be implemented by requiring the Transportation Cabinet's contractor on the logo program to accept and process applications for logos on partially controlled access highways. If the decision is made to increase the fees charged in the logo program, the contractor will be required to notify each participating business of the increase.

(8) Any person with a disability for which the Transportation Cabinet needs to make an accommodation in order for the person to participate in the public comment hearing should notify Sandra Pullen Davis at the above-mentioned address no later than July 13, 1998.

June 15, 1998

(1) **603 KAR 4:045**, Supplemental guide signs.

(2) The Kentucky Transportation Cabinet intends to promulgate a new administrative regulation governing the eligibility requirements for supplemental guide signs to be placed on state-owned right-of-way. This administrative regulation will not include signs subject to HB 612 passed by the 1998 General Assembly.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for July 23, 1998 at 2:30 p.m. local prevailing time, at 501 High Street, 4th Floor Hearing/Conference Room, Frankfort, Kentucky 40622.

(4)(a) The public hearing will be held if:

1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and

2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to July 23, 1998, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Sandra Pullen Davis, 501 High Street, 10th Floor Mail Code 10-13, State Office Building, Frankfort, Kentucky 40622.

(b) On a request for public hearing, a person shall state:

1. "I agree to attend the public hearing."; or

2. "I will not attend the public hearing."

(6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.

(b) Persons who wish to file this request may obtain a request form from the Transportation Cabinet at the address listed above.

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to the this signage is KRS 189.337(2) and 23 CFR 655 Subpart F.

(b) The administrative regulation that the Transportation Cabinet intends to promulgate will be a new administrative regulation, 603 KAR 4:045. It will establish the criteria for placement of supplemental guide signs which are not under the purview of HB 612 enacted by the 1998 General Assembly.

(c) The necessity, function, and conformity of the proposed administrative regulation is as follows: KRS 189.337(2) requires the Transportation Cabinet's Department of Highways to adopt a uniform system of traffic control devices. The Federal Highway Administration, through 23 CFR Part 655, requires the traffic control devices on all public highways or streets to be in substantial compliance with "The Manual on Uniform Traffic Control Devices". This manual specifies the number of supplemental guide signs which may be erected near each intersection and further mandates that each state adopt policies establishing the circumstances in which supplemental guide signs may be erected. This administrative regulation is promulgated to establish the criteria for erection of a supplemental guide sign not covered by HB 612.

(d) The benefits expected from the administrative regulation are public notice and uniformity in administration of the requirements of the erection of supplemental guide signs on highways in Kentucky. It must be noted that these signs are of tremendous interest to the tourism industry as well as providing direction to the traveling public.

(e) The administrative regulation will be implemented as follows: Distribution of the criteria throughout the Department of Highways and provision of copies to all parties requesting supplemental guide signs.

(8) Any person with a disability for which the Transportation Cabinet needs to make an accommodation in order for the person to participate in the public comment hearing should notify Sandra Pullen Davis at the above-mentioned address no later than July 13, 1998.

June 15, 1998

(1) **603 KAR 7:080**, Human services transportation delivery.

(2) The Transportation Cabinet intends to promulgate a new administrative regulation governing programs relating to the transportation of persons who receive federal or state human service program monetary assistance.

(3) A public hearing to receive oral and written comments on the proposed administrative regulations has been scheduled for July 31, 1998 at 9 a.m., in the Health Services Auditorium, Health Services Building, first floor, 275 East Main Street, Frankfort, Kentucky 40621.

(4)(a) The public hearing will be held if:

1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and

2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to July 31, 1998, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Sandra Pullen Davis, Transportation Cabinet, Staff Assistant, 501 High Street, Frankfort, Kentucky 40622, (502) 564-7650, Fax: (502) 564-5238.

(b) On a request for public hearing, a person shall state:

1. "I agree to attend the public hearing."; or

2. "I will not attend the public hearing."

VOLUME 25, NUMBER 1 – JULY 1, 1998

(6)(a) KRS Chapter 13A provides that a person who desires to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.

(b) Persons who wish to file this request may obtain a request form from the Administrative Regulation Coordinator, Sandra Pullen Davis, at the address and phone number listed in (5)(a) above.

(c) Requests for notification and the Notice of Intent to Promulgate shall be made available in another format, upon request, in accordance with the Americans With Disabilities Act. Persons requesting assistance regarding the Transportation Cabinet administrative regulations may contact Sandra Pullen Davis at the address and phone number listed in (5)(a) above.

(7) Information relating to the proposed administrative regulation:

(a) The statutory authority for the promulgation of administrative regulation 603 KAR 7:080 relating to human service transportation delivery is KRS 96A.095 and 49 USC Chapter 53.

(b) The administrative regulation the Transportation Cabinet intends to promulgate will be new, 603 KAR 7:080. In 603 KAR 7:080, the Transportation Cabinet will develop a regional transportation network funded through a capitated and/or fee-for-service calculation process to meet the transportation needs of individuals in the Commonwealth in a more efficient and economic manner.

(c) The necessity, function, and conformity of the proposed amended administrative regulation 603 KAR 7:080 is as follows: The Transportation Cabinet is authorized by KRS 96A.095 to accept funds from the Commonwealth, any of its agencies, and any federal agency appropriations and grants to accomplish the promotion and development of mass transit services in Kentucky. The function of this administrative regulation is to implement the procedures required to administer human services transportation deliveries. This will be done in conformance with federal requirements.

(d) The benefits expected from these administrative regulations are: This administrative regulation will permit a regional capitated transportation network (as specified in the demonstration project). The regional transportation network will reflect the region's transportation infrastructure and will be geared to the unique needs of that region's population. This project should offer savings to the Health Services, Families and Children, and Workforce Development Cabinets while promoting and increasing safety, reliability, and stability in providing transportation to those in need.

(e) The administrative regulation will be implemented as follows: The provisions of the transportation network will be accomplished by using brokers/providers who will determine which transportation provider can best meet the needs of individuals needing transportation. A referral of eligible individuals will be made by Health Services, Families and Children, and Workforce Development Cabinets' staff.

(8) Any person with a disability for which the Transportation Cabinet needs to make an accommodation in order for the person to participate in the public comment hearing should notify Sandra Pullen Davis at the above-mentioned address no later than July 21, 1998.

KENTUCKY BOARD OF EDUCATION

June 2, 1998

(1) **702 KAR 3:060**, Procedure for payment of employees.

(2) The Kentucky Board of Education intends to amend an administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for July 21, 1998, at 10 a.m. in the State Board Room, 1st Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601.

(4)(a) The public hearing will be held if it is requested, in writing, by at least five (5) persons, or an administrative body, or an association having at least five (5) members; and a minimum of five (5) persons, or the administrative body or association agree, in writing, to be present at the public hearing.

(b) If five (5) persons, or an administrative body or association, request this public hearing, and agree in writing to be present at this public hearing, it will be as scheduled.

(c) If a request for a public hearing is not received from the required number of people at least 10 days prior to July 21, 1998, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to: Mr. Kevin Noland, General Counsel, Office of Legal Services, Kentucky Department of Education, 500 Mero Street, 1st Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, fax (502) 564-9321.

(b) On a request for a public hearing, a person shall state:

1. "I agree to attend the public hearing," or

2. "I will not attend the public hearing."

(6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to amend an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.

(b) Persons who wish to file this request may obtain a request from the Department of Education at the address listed above.

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the amendment of an administrative regulation relating to procedure for payment of employees is KRS 156.160.

(b) The administrative regulation that the Kentucky Board of Education intends to amend is 702 KAR 3:060.

(c) The necessity, function, and conformity of the proposed administrative regulation is to amend 702 KAR 3:060 because effective July 15, 1998, KRS 160.291 will require that a local board of education pay an employee any remaining salary owed prior to the end of the fiscal year upon completion of the employee's responsibilities or duties if so notified by the employee.

(d) The benefit expected for the administrative regulation is to conform with KRS 160.291.

(e) The administrative regulation will be implemented as follow: Upon written request of a school district employee, a local school board shall deliver all deferred checks on or before June 30 of the current fiscal year.

June 2, 1998

(1) **702 KAR 3:110**, Document filing dates.

(2) The Kentucky Board of Education intends to amend an administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for July 21, 1998, at 10 a.m. in the State Board Room, 1st Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601.

(4)(a) The public hearing will be held if it is requested, in writing, by at least five (5) persons, or an administrative body, or an association having at least five (5) members; and a minimum of five (5) persons, or the administrative body or association agree, in writing, to be present at the public hearing.

VOLUME 25, NUMBER 1 – JULY 1, 1998

(b) If five (5) persons, or an administrative body or association, request this public hearing, and agree in writing to be present at this public hearing, it will be as scheduled.

(c) If a request for a public hearing is not received from the required number of people at least 10 days prior to July 21, 1998, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to: Mr. Kevin Noland, General Counsel, Office of Legal Services, Kentucky Department of Education, 500 Mero Street, 1st Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, fax (502) 564-9321.

(b) On a request for a public hearing, a person shall state:

1. "I agree to attend the public hearing," or
2. "I will not attend the public hearing."

(6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.

(b) Persons who wish to file this request may obtain a request from the Department of Education at the address listed above.

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the amendment of an existing administrative regulation relating to procedure for payment of employees.

(b) The administrative regulation that the Kentucky Board of Education intends to amend is 702 KAR3:110.

(c) The necessity, function, and conformity of the proposed administrative regulation is to insure uniformity in document filing dates.

(d) The benefits expected for the administrative regulations are the establishment of uniform procedures for document filing dates.

(e) The administrative regulation will be implemented as follows: State reports will be submitted to the Division of Finance electronically.

EDUCATION PROFESSIONAL STANDARDS BOARD

May 1998

(1) **704 KAR 20:710**, Professional certificate for instructional leadership-school principal, all grades.

(2) The Education Professional Standards Board intends to amend the administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for July 24, 1998, at 10 a.m. in the Local District Room, First Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601.

(4)(a) The public hearing will be held if it is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and a minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.

(b) If 5 persons, or an administrative body or association, request this public hearing, and agree in writing to be present at this public hearing, it will be held as scheduled.

(c) If a request for a public hearing is not received from the required number of people at least 10 days prior to July 24, 1998, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Executive Secretary, Education Professional Standards Board, 1024 Capital Center Drive, Frankfort, Kentucky, 40601, (502) 573-4606.

(b) On a request for public hearing, a person shall state:

1. "I agree to attend the public hearing."; or
2. "I will not attend the public hearing."

(6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.

(b) Persons who wish to file this request may obtain a request form from the Education Professional Standards Board at the address listed above.

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the amendment of an administrative regulation relating to a professional certificate for instructional leadership-school principal, all grades is KRS 161.020, 161.027 and 161.028.

(b) The administrative regulation that the Education Professional Standards Board intends to amend will delete the current Kentucky School Administrator Standards and add the nation Interstate School Leader Licensure Consortium Standards as the required standards for all administrator preparation and certification programs.

(c) The necessity and function of the proposed administrative regulation is as follows: KRS 161.028 authorizes the Education Professional Standards Board to establish all standards and requirements for principal preparation and certification programs. This administrative regulation establishes the standards and requirements to be met by all candidates who seek a school principal certificate.

(d) The benefits expected from administrative regulation are: The change from the current state standards to the national standards is a move to raise the bar on what beginning principals should know and be able to do as an instructional leader. This change will serve as a catalyst to improve the quality of the principal preparation program at the higher education level.

(e) The administrative regulation will be implemented as follows: The new adopted standards will be disseminated to all colleges for use in restructuring the school administrator preparation program so that there is a close alignment with the standards. A new licensure assessment built around the new school leader standards will assess the principal candidate's ability to meet the standards. Also, the Kentucky Principal Intern Program will be revised to focus on the new standards for assessing new principals during their first year of employment.

EDUCATION, ARTS AND HUMANITIES CABINET Kentucky Commission on the Deaf and Hard of Hearing

June 4, 1998

(1) **735 KAR 1:010**, Eligibility requirements, application and certification procedures to receive specialized telecommunications equipment for the deaf, hard of hearing and speech impaired; **735 KAR 1:020**, Processing system including vendor participation, security, and maintenance and repair for specialized telecommunications equipment.

(2) The Kentucky Commission on the Deaf and Hard of Hearing (KCDHH) intends to amend the existing administrative regulations governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed amendments to the administrative regulations has been scheduled for July 30, 1998 at the KCDHH Conference Room from 9 a.m. - 10:30 a.m. The KCDHH Offices and Conference Room are located at 632 Versailles Road Frankfort, Kentucky.

VOLUME 25, NUMBER 1 – JULY 1, 1998

(4)(a) The public hearing will be held if it is requested, in writing, by at least five (5) persons, or an administrative body, or an association having at least five (5) members; and a minimum of the five (5) persons, or the administrative body or association, agree, in writing to be present at the public hearing.

(b) If five (5) persons, or an administrative body or association, request this public hearing, and agree in writing to be present at this public hearing, it will be held as scheduled.

(c) If a request for a public hearing is not received from the required number of people at least ten (10) days prior to June 30, 1998, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Kentucky Commission on the Deaf and Hard of Hearing, ATTN: Dr. Bobbie Beth Scoggins, 632 Versailles Road, Frankfort, Kentucky 40601.

(b) On a request for public hearing, a person shall state:

1. "I agree to attend the public hearing."; or

2. "I will not attend the public hearing."

(6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate administrative regulations governing a specific subject matter may file a request to be informed by the administrative body.

(b) Persons who wish to file this request may obtain a request form from the Kentucky Commission on the Deaf and Hard of Hearing at the above address.

(7) Information relating to the proposed amendment to the administrative regulations.

(a) The statutory authority for the promulgation and amendment of the existing administrative regulations in relation to the TDD Distribution Program is KRS 163.525(5).

(b) The administrative regulations the KCDHH intends to promulgate will amend existing administrative regulations. The changes allow flexibility to allow different staff positions to do necessary administrative work including the approval of the applications; remove the artificial larynx from the equipment selection list because it does not solely provide access to the telecommunications relay system; removes the waiting list (60 days time frame) of approving or denying applications because the TDD Distribution Program has exhausted the waiting list; and to modify and update the application forms for the TDD Distribution Program.

(c) The necessity and function of the proposed amendments to the existing administrative regulations are as follows: This administrative regulation is necessary to implement the provision of KRS 163.525(5) which mandates that the Kentucky commission on the Deaf and Hard of hearing (KCDHH) establish a program to distribute specialized telecommunications equipment (STE) to any deaf, hard-of-hearing, or speech-impaired persons qualified to receive the equipment at no additional cost beyond a single party residence line. The function of this administrative regulation is to establish the criteria for awarding STE and the application and certification procedures.

(d) The benefits expected from the proposed amendments to the existing administrative regulations are: It will streamline the Kentucky Commission on the Deaf and Hard of Hearing's (KCDHH) hiring procedures for the TDD Distribution Program and allow the ability to assign tasks according to needs of the program. The consumers will benefit from the changes in the regulations relating to future technology, if appropriate such as software for computers which allows access to the Kentucky Relay Service. The consumers also will benefit knowing that the waiting time frame for approval of applications does not exist any more and that the TDD Distribution Program reviews all applications immediately upon receipt.

(e) The administrative regulations will be implemented as follows: The KCDHH will continue to administer the TDD Distribution Program as outlined in the existing administrative regulations until the amendments take effect. Once the amendments take effect, the KCDHH shall begin distributing the revised application form. All ownership rights and responsibilities with the exception for maintenance and repair, will continue to belong solely to the recipient.

WORKFORCE DEVELOPMENT CABINET Department of Vocational Rehabilitation

June 10, 1998

(1) Regulation number and title: **781 KAR 1:070, Fees for service.**

(2) The Cabinet for Workforce Development, Department of Vocational Rehabilitation intends to promulgate an administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for July 21, 1998, at 10 a.m., in the DVR Training Room, 209 Saint Clair Street, Frankfort, Kentucky 40601.

(4)(a) The public hearing will be held if:

1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and

2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to July 21, 1996, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: George Parsons, Staff Assistant, Department of Vocational Rehabilitation, 209 Saint Clair Street, Frankfort, Kentucky 40601

(b) On a request for public hearing, a person shall state:

1. "I agree to attend the public hearing."; or

2. "I will not attend the public hearing."

(6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.

(b) Persons who wish to file this request may obtain a request form from the Department of Vocational Rehabilitation at the address listed above.

(c) Note: Requests for Notification and the Notice of Intent to Promulgate shall be made available in alternative format, upon request, in accordance with the Americans With Disabilities Act. Persons requesting assistance regarding Department of Vocational Rehabilitation regulations may call toll free 1-800 372-7172 (V/TDD).

(7) Information relating to the proposed administrative regulation:

(a) The statutory authority for the promulgation of an administrative regulation relating to vocational rehabilitation is KRS 151B.195.

(b) The administrative regulation that the Department intends to promulgate will amend 781 KAR 1:070 as follows: The Carl D. Perkins Comprehensive Rehabilitation Center (CDPCRC) plans to add a wellness program to the services provided to the community. The fee schedule is being revised to reflect the cost of the new service.

VOLUME 25, NUMBER 1 – JULY 1, 1998

(c) The necessity and function of the proposed administrative regulation is as follows: Federal law allows the expenditure of Title I funds for eligible individuals only. The CDCPRC can make needed services available to other agencies only on a fee for service basis. KRS Chapter 13A requires that those fees be promulgated by administrative regulation.

(d) The benefits expected from administrative regulation are: The community will benefit by having available a wellness program including aquatics, aerobics and strengthening. Any fees collected will be used to offset administrative costs associated with the operation of CDCPRC.

(e) The administrative regulation will be implemented as follows: Individuals and community agencies will be advised of the availability, benefits and cost of the wellness program. Interested individuals will be served on a first requested, first served basis.

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL

June 15, 1998

(1) The subject matter of this administrative regulation, **804 KAR 4:195**, is the repeal of 804 KAR 4:190.

(2) The Department of Alcoholic Beverage Control intends to promulgate an administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for Friday, July 31, 1998, at 10 a.m., EDT, in the Hearing Room of the Department of Alcoholic Beverage Control, 1003 Twilight Trail, Suburban Park, Suite A-2, Frankfort, Kentucky 40601.

(4)(a) The public hearing will be held if:

1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and

2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to Friday, July 31, at 10 a.m., EDT, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Rebecca W. Goodman, Kentucky Department of Alcoholic Beverage Control, 1003 Twilight Trail, Suburban Park, Suite A-2, Frankfort, Kentucky 40601.

(b) On a request for public hearing, a person shall state:

1. "I agree to attend the public hearing."; or

2. "I will not attend the public hearing."

(6)(a) KRS Chapter 13A provides that persons who desires to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.

(b) Persons who wish to file this request may obtain a request form from the Kentucky Department of Alcoholic Beverage Control at the address listed above.

(7) Information relating to the proposed administrative regulation:

(a) The statutory authority for the promulgation of the administrative regulation relating to the subject matter of the administrative regulation is KRS 241.060.

(b) The administrative regulation that the Department of Alcoholic Beverage Control intends to promulgate will repeal an existing administrative regulation. The proposed new administrative regulation will repeal 804 KAR 4:190, Out-of-state brewers bond.

(c) The necessity and function of the proposed administrative regulation is as follows: 804 KAR 4:190 will no longer be required because KRS 243.040 was amended in House Bill 565, 1998 Session of the General Assembly, to create a new license for out-of-state brewers selling malt beverages to Kentucky distributors.

(d) The benefits expected from the administrative regulation are: This administrative regulation repeals 804 KAR 4:190, Out-of-state brewers bond, which is no longer necessary.

(e) The administrative regulation will be implemented as follows: It shall be implemented by having staff comply with operational procedures and standards noted in the regulation.

June 15, 1998

(1) The subject matter of this administrative regulation, **804 KAR 4:350**, Out-of-state brewers' licenses, is to create a license to permit out-of-state brewers' to sell malt beverages to Kentucky distributors.

(2) The Department of Alcoholic Beverage Control intends to promulgate an administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for Friday, July 31, 1998, at 10 a.m., EDT, in the Hearing Room of the Department of Alcoholic Beverage Control, 1003 Twilight Trail, Suburban Park, Suite A-2, Frankfort, Kentucky 40601.

(4)(a) The public hearing will be held if:

1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and

2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to Friday, July 31, at 10 a.m., EDT, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Contact person Rebecca W. Goodman, Kentucky Department of Alcoholic Beverage Control, 1003 Twilight Trail, Suburban Park, Suite A-2, Frankfort, Kentucky 40601.

(b) On a request for public hearing, a person shall state:

1. "I agree to attend the public hearing."; or

2. "I will not attend the public hearing."

(6)(a) KRS Chapter 13A provides that persons who desires to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.

(b) Persons who wish to file this request may obtain a request form from the Kentucky Department of Alcoholic Beverage Control at the address listed above.

(7) Information relating to the proposed administrative regulation:

(a) The statutory authority for the promulgation of the administrative regulation relating to the subject matter of the administrative regulation is KRS 241.060 and 243.040(12).

(b) The administrative regulation that the Department of Alcoholic Beverage Control intends to promulgate will not amend an existing administrative regulation. The proposed administrative regulation will create an out-of-state brewers' license and a limited out-of-state brewers' license.

VOLUME 25, NUMBER 1 – JULY 1, 1998

(c) The necessity and function of the proposed administrative regulation is as follows: KRS 243.040 was amended in 1998 to create a new license for out-of-state brewers selling malt beverages to Kentucky distributors. This regulation tiers the requirements for licensing and repeals 804 KAR 4:190 which is no longer required. This administrative regulation provides for the issuance of an out-of-state brewers' license to any brewer, distributor, importer for a brewer, or importer of a foreign brand who desires to import more than 25,000 barrels or 775,000 gallons of malt beverages or the equivalent, into the state. This administrative regulation also provides for the issuance of a limited out-of-state brewers' license to any brewer, distributor, importer for a brewer, or importer of a foreign brand who desires to import less than 25,000 barrels or 775,000 gallons of malt beverages or the equivalent, into the state for a fee of \$250.

(d) The benefits expected from the administrative regulation are: This administrative regulation tiers the licensing requirements for an out-of-state brewers' license and a limited out-of-state brewers' license for the importation of malt beverages.

(e) The administrative regulation will be implemented as follows: It shall be implemented by having staff comply with operational procedures and standards noted in the regulation.

DEPARTMENT OF INSURANCE

June 15, 1998

(1) **806 KAR 14:130.** Electronic applications, forms, and signatures.

(2) The Department of Insurance intends to promulgate an administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for July 21, 1998, at 10 a.m., at the Department of Insurance, 215 West Main Street, Frankfort, Kentucky.

(4)(a) The public hearing will be held if:

1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and

2. A minimum of 5 persons, or the administrative body or association agree, in writing, to be present at the public hearing.

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to July 21, 1998, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Kentucky Department of Insurance, Attn.: Sharron S. Burton, P.O. Box 517, Frankfort, Kentucky 40602, (502) 564-6032, fax number (502) 564-1456.

(b) On a request for public hearing, a person shall state:

1. "I agree to attend the public hearing."; or

2. "I will not attend the public hearing."

(6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.

(b) Persons who wish to file this request may obtain a request form from the Department of Insurance at the address listed above.

(7) Information relating to the proposed administrative regulation:

(a) The statutory authority for the promulgation of an administrative regulation relating to the subject matter of this administrative regulation is KRS 304.2-110.

(b) The administrative regulation that the Department of Insurance intends to promulgate will not amend an existing administrative regulation. It will establish guidelines for using electronic insurance applications and the electronic signature of an applicant for insurance. This administrative regulation will also establish guidelines for the commissioner's approval of electronic insurance applications and other forms related to the insurance contract.

(c) The necessity and function of the proposed administrative regulation is as follows: In general, KRS 304.14-120 requires that applications for insurance and other insurance policies or forms must be filed with and approved by the commissioner prior to use in the state of Kentucky. Technological advances have led to an increase use of electronic insurance applications and other electronic forms. In addition, the signature of an applicant on an insurance application is being obtained by electronic means. Therefore, it is necessary for the commissioner to establish guidelines for the approval of electronic insurance applications and forms and the use of electronic signatures.

(d) The benefits expected from this administrative regulation are: This administrative regulation will establish guidelines that will assist the commissioner in determining whether electronic insurance applications and other electronic forms should be approved or disapproved. This administrative regulation will also assist the commissioner in regulating the use of electronic signatures on insurance applications.

(e) The administrative regulation will be implemented as follows: The commissioner, pursuant to KRS 304.14-120, is required to either approve or disapprove applications for insurance and other form filings submitted by insurers. Insurers are required to file electronic applications and forms in accordance with KRS 304.14-120. Once filed, the commissioner, or his designee, will review the electronic insurance applications and forms to determine if the filing meets the requirements of this administrative regulation. If not, the commissioner may disapprove the filing.

KENTUCKY PUBLIC SERVICE COMMISSION

June 11, 1998

(1) Regulation number and title: **807 KAR 5:063.** Filing requirements and procedures for proposals to construct antenna towers for cellular telecommunications services or personal communications services.

(2) The Kentucky Public Service Commission intends to promulgate an amendment to the administrative regulation governing the subject matter cited above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for July 30, 1998, at 9 a.m., Eastern Daylight Time, in Hearing Room 1, 730 Schenkel Lane, Frankfort, Kentucky.

(4)(a) The public hearing will be held if:

1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and

2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to July 30, 1998, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written requests to the following address: Deborah T. Eversole, Staff Attorney, Kentucky Public Service Commission, 730 Schenkel Lane, P.O. Box 615, Frankfort, Kentucky, 40602.

(b) On a request for a public hearing, a person shall state:

1. "I agree to attend the public hearing."; or

VOLUME 25, NUMBER 1 – JULY 1, 1998

2. "I will not attend the public hearing."

(6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.

(b) Persons who wish to file this request may obtain a request form from the Kentucky Public Service Commission at the address listed above.

(7) Information relating to the proposed administrative regulation:

(a) The statutory authority for the promulgation of an administrative regulation relating to this subject is as follows: KRS 278.040(3) provides that the commission may promulgate, pursuant to KRS Chapter 13A, reasonable regulations to implement the provisions of KRS Chapter 278. KRS 278.020(1) authorizes the commission to issue certificates of public convenience and necessity for utility construction. KRS 278.650 prescribes procedures to be followed regarding a proposal for construction of an antenna tower in a county containing a city of the first class which differ from procedures to be followed in counties that do not contain a city of the first class. HB 168, Section 4, requires the commission to promulgate administrative regulations to establish the minimum content of a uniform application to be filed with the commission when a tower is proposed to be located in a jurisdiction that has adopted planning and zoning regulations in accordance with KRS Chapter 100, except for any county containing a city of the first class. The amendments proposed to this regulation will prescribe filing requirements and procedures to be followed in applying for a certificate of public convenience and necessity to construct a telecommunications antenna tower in a jurisdiction that has adopted planning and zoning regulations in accordance with KRS Chapter 100 and that does not contain a city of the first class.

(b) The administrative regulation that the Kentucky Public Service Commission intends to promulgate will amend 807 KAR 5:063. It will require applicants to file documents and information required by the regulation governing utility construction in general, 807 KAR 5:001, Sections 8 and 9, except for cost information required by (9)(2)(e) and (f); Federal Aviation Administration and Kentucky Airport Zoning Commission applications; any applicable Federal Communications Commission authorization; geotechnical report; directions to the proposed site; the sale or lease agreement regarding the property on which the facility is proposed to be located; information regarding designers and builders of the facility; a site development plan, vertical profile sketch of the facility, and tower and foundation design plans signed and sealed by a professional engineer registered in Kentucky; and a map identifying every structure and every owner of real estate within 500 feet of the site. The commission does not anticipate proposing any substantive changes to current filing requirements for an application to construct a tower in a jurisdiction outside a county containing a city of the first class which has not adopted planning and zoning regulations in accordance with KRS Chapter 100. The commission does not anticipate proposing any substantive changes to current filing requirements for an application to construct a tower in a county containing a city of the first class. However, HB 168 creates a third class of applications to construct telecommunications antenna towers: a "uniform application" that is to be filed by an applicant wishing to construct a tower in a jurisdiction which does not contain a city of the first class and which has adopted planning and zoning regulations in accordance with KRS Chapter 100. Accordingly, the commission proposes to create a new section of the administrative regulation requiring the filing of the following documents and information, in addition to others generally required by Section 1 of this administrative regulation: all documents required by HB 168, Section 2; a statement as to whether the planning unit in whose jurisdiction the tower is proposed has officially registered with the commission by filing its resolution to plan for and regulate the siting of antenna towers; and, if the planning unit has officially registered with the commission, a statement that the completed uniform application shall be submitted to the affected planning unit within five (5) days after the date the application is filed with the commission. In addition, the commission will propose that the uniform application shall be entitled "Uniform Application: Confidential and Proprietary," and that the title be printed beneath the case caption on the first page of the application in bold face type that is at least as large as any other type appearing on the document.

(c) The necessity and function of the proposed administrative regulation is as follows: The recently enacted HB 168 provides that, in jurisdictions that have adopted planning and zoning regulations in accordance with KRS Chapter 100 and that do not contain a city of the first class, the appropriate local authorities may, if they wish to do so, register with the commission and conduct a sixty (60) day review of a uniform application to construct a cellular antenna tower. If the local planning commission disapproves the uniform application, the Public Service Commission may override that decision if there is no acceptable alternative site and if the public convenience and necessity require the construction. If the planning commission fails to issue its decision within sixty (60) days and if there is no written agreement between the local planning commission and the utility for a specific date for issuance of a decision, the approval of the uniform application is presumed. The amendments the commission proposes to promulgate are necessary in order to fulfill the statutory mandate of HB 168, Section 4, specify the content of a "uniform application," defined in HB 168, Section 1(5) as an application submitted to the Public Service Commission for a certificate of public convenience and necessity to construct an antenna tower in a jurisdiction that has adopted planning and zoning regulations in accordance with KRS Chapter 100, except for any county that contains a city of the first class. HB 168, Section 5, provides that the uniform application shall be deemed confidential and proprietary, and provides that any person violating the confidentiality provision is guilty of official misconduct in the second degree as provided by KRS 522.030. Accordingly, the commission proposes to require that the application state on its face, in bold type, that it is confidential and proprietary, to ensure that the state and local government personnel handling the document do not inadvertently compromise its confidential nature.

(d) The benefits expected from the proposed administrative regulation are: Requirements and procedures regarding authorization to construct an antenna tower will be updated to conform to new law. In addition, the requirement that applicants who are filing a "uniform application" entitle it as such and specify in bold type that it is proprietary and confidential will assist the commission and local authorities who receive the application in preserving confidentiality as required by law.

(e) The administrative regulation will be implemented as follows: The requirements of the regulation will be implemented and enforced as soon as they are effective.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Housing, Buildings and Construction
Office of State Fire Marshal
Commission on Fire Protection Personnel Standards and Education

June 12, 1998

(1) **815 KAR 45:100**, Volunteer Fire Department Loan Fund.

(2) The Commission on Fire Protection Personnel Standards and Education intends to amend the administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for Thursday, July 23, 1998 at 10 a.m., local time in the Department's Conference Room at 1047 U.S. Highway 127 South, Suite #1, Frankfort, Kentucky.

(4)(a) The public hearing will be held if:

1. It is requested, in writing, by at least five (5) persons or an administrative body or an association having at least five (5) members; and

VOLUME 25, NUMBER 1 – JULY 1, 1998

2. A minimum of five (5) persons or the administrative body or association agree, in writing, to be present at the public hearing.
- (b) If a request for a public hearing and agreement to attend the public hearing are not received from the required number of people at least ten (10) days prior to July 23, 1998, the public hearing will be canceled.
- (5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Honorable Judith G. Walden, General Counsel, Department of Housing, Buildings and Construction, 1047 U. S. Highway 127 South, Suite #1, Frankfort, Kentucky 40601, Fax: (502) 564-6799.
- (b) On a request for public hearing, a persons shall state:
1. "I agree to attend the public hearing."; or
 2. "I will not attend the public hearing."
- (6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.
- (b) Persons who wish to file this request may obtain a request form from the department's general counsel at the address listed above.
- (7) Information relating to the proposed administrative regulation:
- (a) The statutory authority for the promulgation of this administrative regulation is KRS 95A.050.
- (b) The commission intends to amend various sections of the administrative regulation to comply with KRS Chapter 13A drafting rules but the primary amendment is to increase the loan amount available to volunteer fire departments from \$50,000 to \$75,000 for equipment purchases and construction of facilities.
- (c) The necessity and function of the proposed administrative regulation is as follows: This administrative regulation is necessary to establish the criteria for qualifying for low interest loans to volunteer fire departments for the purchase of major equipment and construction of facilities and the mandatory procedures to be followed in obtaining and repaying the loan.
- (d) The benefits expected from this administrative regulation are: The ability to loan a larger sum of money to a volunteer fire department.
- (e) This administrative regulation will be implemented by the Commission on Fire Protection Personnel Standards and Education.

CABINET FOR HEALTH SERVICES Office of Inspector General

June 1, 1998

- (1) **900 KAR 2:031** - Repeal of 900 KAR 2:030.
- (2) The Office of Inspector General intends to promulgate the administrative regulation cited above.
- (3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for July 31, 1998, at 9 a.m. in the Cabinet for Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky.
- (4)(a) The public hearing will be held if:
1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and
 2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.
- (b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to July 31, 1998, the public hearing will be canceled.
- (5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Mae B. Lewis, Cabinet Regulation Coordinator, Office of the Counsel, Cabinet for Health Services, 275 East Main Street, 4W-C, Frankfort, Kentucky 40621, Telephone: (502) 564-7905, Fax: (502) 564-7573.
- (b) On a request for public hearing, a person shall state:
1. "I agree to attend the public hearing."; or
 2. "I will not attend the public hearing."
- (6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.
- (b) Persons who wish to file this request may obtain a request form from: Administrative Regulation Coordinator, Office of Inspector General, CHR Building, 4-East, 275 East Main Street, Frankfort, Kentucky 40621.
- (c) Note: Requests for Notification and the Notice of Intent to Promulgate shall be made available in another format, upon request, in accordance with the Americans with Disabilities Act. Persons requesting assistance regarding Cabinet for Health Services* regulations may call toll free 1-800-372-2973 (V/TDD).
- (7) Information relating to the proposed administrative regulation:
- (a) The statutory authority for the repeal of administrative regulations relating to the quality of care rating system for long-term care facilities is HB 679 enacted during the 1998 Regular Session of the General Assembly.
- (b) The cabinet intends to promulgate 900 KAR 2:031 to repeal 900 KAR 2:030.
- (c) The necessity, function, and conformity of the proposed administrative regulation is as follows: 900 KAR 2:030 is no longer required because KRS 216.550, requiring the cabinet to establish a system for rating the quality of care provided by long-term care facilities, has been repealed.
- (d) The benefits expected are that the quality of care provided by long-term care facilities will not be determined by their required performance.
- (e) The administrative regulation will be implemented as follows: By the Division of Licensing and Regulation in the Office of Inspector General, Cabinet for Health Services.

Department for Public Health Division of Adult and Child Health

June 8, 1998

- (1) **902 KAR 4:110**, Abortion information.
- (2) The Cabinet for Health Services, Department for Public Health, Division of Adult and Child Health, intends to promulgate an administrative regulation governing the subject matter cited above.
- (3) A public hearing to receive oral and written comments on the proposed administrative regulations has been scheduled for July 31, 1998, at 9 a.m., in the Cabinet for Health Services Auditorium, Health Services Building, first floor, 275 East Main Street, Frankfort, Kentucky.
- (4)(a) The public hearing will be held if:

VOLUME 25, NUMBER 1 – JULY 1, 1998

1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least five members; and
2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.
- (b) If a request for public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to July 21, 1998, the public hearing will be cancelled.
- (5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Mae B. Lewis, Cabinet Regulation Coordinator, Office of the Counsel, Cabinet for Health Services, 275 East Main Street, 4-West, Frankfort, Kentucky 40621, (502) 564-7905, Fax: (502) 564-7543.
- (b) On a request for public hearing, a person shall state:
 1. "I agree to attend the public hearing."; or
 2. "I will not attend the public hearing."
- (6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.
- (b) Persons who wish to file this request may obtain a request form from the Administrative Regulation Coordinator, Department for Public Health, Commissioner's Office, 275 East Main Street, Frankfort, Kentucky 40621.
- (c) Note: Requests for Notification and the Notice of Intent to promulgate shall be made available in another format, upon request, in accordance with the Americans With Disabilities Act. Persons requesting assistance regarding Cabinet for Health Services' regulations may call toll free 1-800-372-2973 (V/TDD).
- (7) Information relating to the proposed administrative regulation.
 - (a) The statutory authority for the promulgation of these administrative regulations relating to 902 KAR 4:110, Abortion information is HB 85 of the 1998 General Assembly.
 - (b) The new administrative regulation that the Cabinet for Health Services, Department for Public Health, intends to promulgate, concerns the provision of informational materials to the pregnant woman concerning the nature and purpose of abortion procedures or treatments, medical risks and alternatives to the procedures and treatments, gestational ages, medical risks associated with carrying the pregnancy to term, medical assistance benefits available and the liability of the father of the fetus.
 - (c) The necessity, function and conformity of the proposed administrative regulation is as follows: HB 85 of the 1998 General Assembly directs the Cabinet for Human Resources to provide specific information to pregnant women prior to an abortion procedure.
 - (d) The benefits expected from the administrative regulation are: Information will be provided as set forth in HB 85 of the 1998 General Assembly.
 - (e) The administrative regulation will be implemented as follows: The Division for Adult and Child Health, Department for Public Health will be responsible for the implementation of this new administrative regulation.

Office of Inspector General

June 1, 1998

- (1) **902 KAR 20:008** - License procedures and fee schedule.
- (2) The Office of Inspector General intends to promulgate the administrative regulation cited above.
- (3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for July 31, 1998, at 9 a.m. in the Cabinet for Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky.
- (4)(a) The public hearing will be held if:
 1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and
 2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.
- (b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to July 31, 1998, the public hearing will be canceled.
- (5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Mae B. Lewis, Cabinet Regulation Coordinator, Office of the Counsel, Cabinet for Health Services, 275 East Main Street, 4W-C, Frankfort, Kentucky 40621, Telephone: (502) 564-7905, Fax: (502) 564-7573.
- (b) On a request for public hearing, a person shall state:
 1. "I agree to attend the public hearing."; or
 2. "I will not attend the public hearing."
- (6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.
- (b) Persons who wish to file this request may obtain a request form from: Administrative Regulation Coordinator, Office of Inspector General, CHR Building, 275 East Main Street, 4E-A, Frankfort, Kentucky 40621.
- (c) Note: Requests for Notification and the Notice of Intent to Promulgate shall be made available in another format, upon request, in accordance with the Americans with Disabilities Act. Persons requesting assistance regarding Cabinet for Health Services' regulations may call toll free 1-800-372-2973 (V/TDD).
- (7) Information relating to the proposed administrative regulation:
 - (a) The statutory authority for the promulgation of an administrative regulation relating to license procedures and fee schedules is KRS 216B.042.
 - (b) The administrative regulation that the Office of Inspector General intends to promulgate will amend 902 KAR 20:008, Section 2 to establish the process for providing public notice of final results of licensure inspections of long-term care facilities.
 - (c) The necessity, function, and conformity of the proposed administrative regulation is as follows: HB 679 enacted during the 1998 Regular Session of the General Assembly requires public notice of final results of licensure inspections of long-term care facilities. This amendment establishes the notification process.
 - (d) The benefits expected from this proposed administrative regulation is that the public will have better access to results of licensure inspections of long-term care facilities.
 - (e) The administrative regulation will be implemented as follows: By the Division of Licensing and Regulation in the Office of Inspector General, Cabinet for Health Services.

June 1, 1998

- (1) **902 KAR 20:091** - Facilities specifications, operation and services; community mental health-mental retardation center.
- (2) The Office of Inspector General intends to promulgate the administrative regulation cited above.

VOLUME 25, NUMBER 1 – JULY 1, 1998

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for July 31, 1998, at 9 a.m. in the Cabinet for Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky.

(4)(a) The public hearing will be held if:

1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and
2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to July 31, 1998, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Mae B. Lewis, Cabinet Regulation Coordinator, Office of the Counsel, Cabinet for Health Services, 275 East Main Street, 4W-C, Frankfort, Kentucky 40621, Telephone: (502) 564-7905, Fax: (502) 564-7573.

(b) On a request for public hearing, a person shall state:

1. "I agree to attend the public hearing."; or
2. "I will not attend the public hearing."

(6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.

(b) Persons who wish to file this request may obtain a request form from: Administrative Regulation Coordinator, Office of Inspector General, CHR Building, 275 East Main Street, 4E-A, Frankfort, Kentucky 40621.

(c) Note: Requests for Notification and the Notice of Intent to Promulgate shall be made available in another format, upon request, in accordance with the Americans with Disabilities Act. Persons requesting assistance regarding Cabinet for Health Services' regulations may call toll free 1-800-372-2973 (V/TDD).

(7) Information relating to the proposed administrative regulation:

(a) The statutory authority for the promulgation of all of the administrative regulations relating to health facilities and health services is KRS 216B.042 and 216B.105.

(b) The cabinet intends to amend Section 4(6)(b) regarding the limitation of three refills on prescriptions. Section 4(3) and 4(6)(g) will be amended to recognize that clinical personnel may prescribe medication within the limits of their statutory scope of practice.

(c) The necessity, function, and conformity of the proposed administrative regulation is as follows: To comply with the mandate of KRS 216B.042 and 216B.105 in the establishment of licensure requirements for the operation of community mental health-mental retardation centers.

(d) The benefits expected from these proposed amendments are that they will permit more flexibility in the prescription of medication, and permit clinical personnel to perform tasks within the limits of their statutory scope of practice.

(e) The administrative regulation will be implemented as follows: By the Division of Licensing and Regulation in the Office of Inspector General, Cabinet for Health Services.

**CABINET FOR FAMILIES AND CHILDREN
Department for Social Insurance
Division of Management and Development**

June 15, 1998

(1) **904 KAR 2:018**, Kentucky Works transportation services.

(2) Cabinet for Families and Children, Department for Social Insurance intends to promulgate an administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for July 31, 1998, at 9 a.m., in the Department for Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky.

(4)(a) The public hearing will be held if:

1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and
2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to July 31, 1998, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Judy Trigg, Regulation Coordinator, Cabinet for Families and Children, 275 East Main Street, 4th West, Frankfort, Kentucky 40621, (502) 564-7900, FAX: (502) 564-7573.

(b) On a request for public hearing, a person shall state:

1. "I agree to attend the public hearing."; or
2. "I will not attend the public hearing."

(6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.

(b) Persons who wish to file this request may obtain a request form from the Administrative Regulation Coordinator, Department for Social Insurance, Division of Management and Development, Third Floor West, CHR Building, 275 East Main, Frankfort, Kentucky 40621.

(c) Note: Requests for notification and the Notice of Intent to Promulgate shall be made available in another format, upon request, in accordance with the Americans With Disabilities Act. Persons requesting assistance regarding Cabinet for Families and Children's regulations may call toll free 1-800-372-2973 (V/TTY).

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to the Kentucky Transitional Assistance Program (K-TAP), transportation services for Kentucky Works is KRS 194.050(1), 205.200(2), EO 96-862 and 42 USC 601 et seq.

(b) The administrative regulation that the Department for Social Insurance intends to promulgate will be a new administrative regulation 904 KAR 2:018. In 904 KAR 2:018, the cabinet will refer eligible Kentucky Transitional Assistance Program (K-TAP) recipients who are eligible to receive transportation services for Kentucky Works, to use a regional capitated transportation network to meet their transportation needs in a more efficient and economic manner.

(c) The necessity, function and conformity of the proposed administrative regulation is as follows: This administrative regulation is necessary to implement the procedures required to administer transportation services for Kentucky Transitional Assistance Program (K-TAP) recipients who are participants in Kentucky Works in areas where the regional capitated transportation network exists. This will be done in conformance with requirements found in 42 USC 601 et seq.

(d) The benefits expected from administrative regulation are: This administrative regulation will allow eligible Kentucky Transitional Assistance Program (K-TAP) recipients to be referred to a regional capitated transportation network. The regional transportation network will reflect

VOLUME 25, NUMBER 1 – JULY 1, 1998

the region's transportation infrastructure and will be geared to the unique needs of that region's population. This network should offer savings to the cabinet while retaining stability in providing transportation to those in need. In those areas where the regional capitated transportation network exists, the broker/provider will provide the transportation on a capitated basis instead of direct payments to recipients.

(e) The administrative regulation will be implemented as follows: The provisions of the transportation network will be accomplished by using brokers/providers who will determine which transportation provider best suits the needs of the individual needing transportation. A referral of eligible individuals will be made by cabinet staff.

June 15, 1998

(1) **904 KAR 2:380.**

(2) Cabinet for Families and Children, Department for Social Insurance intends to promulgate an administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for 9 a.m., July 31, 1998, in the Department for Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky.

(4)(a) The public hearing will be held if:

1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and
2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to, July 31, 1998 the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Judy Trigg, Regulation Coordinator, Cabinet for Families and Children, 275 East Main Street, 4th West, Frankfort, Kentucky 40621, (502) 564-7900, FAX: (502) 564-7573.

(b) On a request for public hearing, a person shall state:

1. "I agree to attend the public hearing."; or
2. "I will not attend the public hearing."

(6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.

(b) Persons who wish to file this request may obtain a request form from the Administrative Regulation Coordinator, Department for Social Insurance, Division of Management and Development, Third Floor West, CHR Building, 275 East Main, Frankfort, Kentucky 40621.

(c) Note: Requests for Notification and the Notice of Intent to Promulgate shall be made available in another format, upon request, in accordance with the Americans With Disabilities Act. Persons requesting assistance regarding Cabinet for Families and Children's regulations may call toll free 1-800-372-2973 (V/TTY).

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to child support is KRS 186.570, 194.050, 205.710 to 205.800, 213.046, 405.430, 405.520, 406.021, 406.025, 42 USC 651 et seq., HB 132 (1998), HB 159 (1998) and HB 161 (1998).

(b) The administrative regulation that the Department for Social Insurance intends to promulgate, 904 KAR 2:380, Child support enforcement application process, will create requirements regarding implementation of the Uniform Interstate Family Support Enforcement Act; location attempts when child abuse or domestic violence are alleged and location services in parental kidnapping cases; the publication of the availability of child support services and the reduction of the nonpublic assistance application fee.

(c) The necessity, function and conformity of the proposed administrative regulation is as follows: This administrative regulation is necessary to revise three forms which are incorporated by reference: General Testimony, Uniform Support Petition and Child Support Enforcement Transmittal. Revision to these forms is necessary to conform to the Uniform Interstate Family Support Act required by the Personal Responsibility and Work Opportunity Reconciliation Act and House Bill 159 enacted by the 1998 General Assembly. This administrative regulation is also necessary to implement safeguards when child abuse or domestic violence is alleged and location is requested and to prescribe location service in parental kidnapping cases. This administrative regulation will prescribe the manner in which the Division of Child Support Enforcement shall publicize the availability of its services. Lastly, this administrative regulation will reduce the application fee currently charged to nonpublic assistance applicants to one dollar. The Division of Child Support Enforcement will absorb the cost of the fee.

(d) The benefits expected from administrative regulation are: The amendments to this administrative regulation will bring the Cabinet in compliance with federal mandates of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 including the mandate relating to the Uniform Interstate Family Support Act (UIFSA), and thus prevent the loss of federal funds. The Cabinet for Families and Children is required to include the mandatory provisions of 42 USC 651 et seq. in the Title IV-D State plan. This administrative regulation will meet requirements of House Bills 159 and 161 enacted by the 1998 General Assembly

(e) The administrative regulation will be implemented as follows: The Cabinet for Families and Children, the Department for Social Insurance will be responsible for implementing the administrative regulation.

June 15, 1998

(1) **904 KAR 2:490, Welfare to Work Grant Program.**

(2) Cabinet for Families and Children, Department for Social Insurance intends to promulgate an administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for July 31, 1998, at 9 a.m., in the Department for Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky.

(4)(a) The public hearing will be held if:

1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and
2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to July 31, 1998, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Judy Trigg, Regulation Coordinator, Cabinet for Families and Children, 275 East Main Street, 4th West, Frankfort, Kentucky 40621, (502) 564-7900, FAX: (502) 564-7573.

(b) On a request for public hearing, a person shall state:

1. "I agree to attend the public hearing."; or
2. "I will not attend the public hearing."

(6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.

(b) Persons who wish to file this request may obtain a request form from the Administrative Regulation Coordinator, Department for Social Insurance, Division of Management and Development, Third Floor West, CHR Building, 275 East Main, Frankfort, Kentucky 40621.

VOLUME 25, NUMBER 1 – JULY 1, 1998

(c) Note: Requests for Notification and the Notice of Intent to Promulgate shall be made available in another format, upon request, in accordance with the Americans With Disabilities Act. Persons requesting assistance regarding Cabinet for Families and Children's regulations may call toll free 1-800-372-2973 (V/TTY).

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to the Kentucky Transitional Assistance Program (K-TAP), 205.200(2), HB 132 (1998) and 42 USC 601 et seq.

(b) The administrative regulation that the Department for Social Insurance intends to promulgate will be a new administrative regulation 904 KAR 2:490. In 904 KAR 2:490, the cabinet will assist long-term Kentucky Transitional Assistance Program (K-TAP) recipients, noncustodial parents of minors whose custodial parents are long-term welfare recipients and former K-TAP recipients to move into unsubsidized employment and to become self-sufficient.

(c) The necessity, function and conformity of the proposed administrative regulation is as follows: This administrative regulation is necessary to enable the Cabinet for Families and Children to qualify to receive federal funds under the Welfare to Work Grant Program in accordance with 20 CFR Part 645 of the Social Security Act, Title IV, Part A, as amended by the Balanced Budget Act of 1997.

(d) The benefits expected from administrative regulation are: This administrative regulation will assist long-term Kentucky Transitional Assistance Program (K-TAP) recipients, noncustodial parents of minors whose custodial parents are long-term welfare recipients and former K-TAP recipients to move into unsubsidized employment and to become self-sufficient.

(e) The administrative regulation will be implemented as follows: The Cabinet for Families and Children will be responsible for implementing the administrative regulation.

Department for Social Services

June 15, 1998

(1) **905 KAR 2:141**, Repeal of 905 KAR 2:140.

(2) Cabinet for Families and Children, Department for Social Services intends to promulgate an administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for July 31, 1998 at 9 a.m., in the Health Services Auditorium, Health Services Building, first floor, 275 East Main Street, Frankfort, Kentucky, 40621.

(4)(a) The public hearing will be held if:

1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and

2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to July 31, 1998, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Judy Trigg, Regulations Coordinator, Office of the General Counsel, Cabinet for Families and Children, 275 East Main Street - 4th Floor West, Frankfort, Kentucky 40621, (502) 564-7900, (502) 564-7573 (Fax).

(b) On a request for public hearing, a person shall state:

1. "I agree to attend the public hearing." or

2. "I will not attend the public hearing."

(6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.

(b) Persons who wish to file this request may obtain a request form from the Administrative Regulation Coordinator, Judy Trigg, Administrative Regulation Coordinator, Department for Social Services, Cabinet for Families and Children, CHR Building, 3rd Floor East, 275 East Main Street, Frankfort, Kentucky 40621.

(c) Note: Requests for Notification and the Notice of Intent to Promulgate shall be made available in another format, upon request, in accordance with the Americans With Disabilities Act. Persons requesting assistance regarding Cabinet for Health Services' regulations may call toll free 1-800-372-2973 (V/TTY).

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to 905 KAR 2:141 are:

(b) The administrative regulation that the Department for Social Services intends to promulgate will repeal 905 KAR 2:140, Child day care programs, which is no longer needed.

(c) The necessity, function and conformity of the proposed administrative regulation is as follows: KRS 194.050 and 199.8994 authorize the Cabinet for Families and Children to adopt regulations as are necessary to implement programs mandated by federal law, or to qualify for receipt of federal funds and as are necessary to cooperate with federal agencies for the proper administration of the cabinet and its programs and to provide uniform administration of child day care funds. This administrative regulation acts specifically to repeal 905 KAR 2:140, Child day care programs, which is no longer needed, because child day care assistance is now regulated by 905 KAR 2:160E, filed with the Legislative Research Commission on April 20, 1998.

(d) The benefits expected from administrative regulation are: The elimination of possible conflict within the Department for Social Service's child care program.

(e) The administrative regulation will be implemented as follows: The Department for Social Services will implement the repeal of 905 KAR 2:140.

CABINET FOR HEALTH SERVICES Department for Medicaid Services

June 15, 1998

(1) **907 KAR 1:635**, Conditions of coverage for the Kentucky Hospital Care Program.

(2) Cabinet for Health Services, Department for Medicaid Services intends to promulgate an administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for July 31, 1998 at 9 a.m., in the Department for Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky, 40621.

(4)(a) The public hearing will be held if:

1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and

VOLUME 25, NUMBER 1 – JULY 1, 1998

2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.
- (b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to July 31, 1998 the public hearing will be canceled.
- (5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Mae B. Lewis, Cabinet Regulation Coordinator, Cabinet for Health Services, Office of the Counsel, 275 East Main Street - 4W-C, Frankfort, Kentucky 40621, (502) 564-7905, (502) 564-7573 (Fax).
- (b) On a request for public hearing, a person shall state:
 1. "I agree to attend the public hearing."; or
 2. "I will not attend the public hearing."
- (6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.
- (b) Persons who wish to file this request may obtain a request form from the Administrative Regulation Coordinator, Department for Medicaid Services, Division of Administration and Development, CHR Building, 275 East Main Street, Frankfort, Kentucky 40621.
- (c) Note: Requests for Notification and the Notice of Intent to Promulgate shall be made available in another format, upon request, in accordance with the Americans With Disabilities Act. Persons requesting assistance regarding Cabinet for Health Services' regulations may call toll free 1-800-372-2973 (V/TDD).
- (7) Information relating to the proposed administrative regulation.
 - (a) The statutory authority for the promulgation of an administrative regulation relating to conditions of coverage for the Kentucky Hospital Care Program is KRS 194.050 and 205.640.
 - (b) The administrative regulation that the Department for Medicaid Services intends to promulgate will incorporate legislation increasing the income limit for eligibility from 100% of the federal poverty level to 150% and make necessary technical corrections
 - (c) The necessity, function and conformity of the proposed administrative regulation is as follows: This administrative regulation sets forth the conditions of coverage under the Kentucky Hospital Care Program.
 - (d) The benefits expected from administrative regulation are: Hospital care for Kentucky's indigent population who are not covered by health insurance.
 - (e) The administrative regulation will be implemented as follows: By the Division of Administration and Development, Department for Medicaid Services, Cabinet for Health Services.

May 15, 1998

- (1) **907 KAR 3:065**, Nonemergency medical transportation waiver services and payments.
- (2) Cabinet for Health Services, Department for Medicaid Services intends to promulgate an administrative regulation governing the subject matter listed above.
- (3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for July 31, 1998 at 9 a.m., in the Department for Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky 40621.
- (4)(a) The public hearing will be held if:
 1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and
 2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.
- (b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to July 31, 1998, the public hearing will be canceled.
- (5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Mae B. Lewis, Cabinet Regulation Coordinator, Cabinet for Health Services, Office of the Counsel, 275 East Main Street - 4W-C, Frankfort, Kentucky 40621, (502) 564-7905, (502) 564-7573 (Fax).
- (b) On a request for public hearing, a person shall state:
 1. "I agree to attend the public hearing."; or
 2. "I will not attend the public hearing."
- (6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.
- (b) Persons who wish to file this request may obtain a request form from the Administrative Regulation Coordinator, Department for Medicaid Services, Division of Administration and Development, CHR Building, 275 East Main Street, Frankfort, Kentucky 40621.
- (c) Note: Requests for Notification and the Notice of Intent to Promulgate shall be made available in another format, upon request, in accordance with the Americans With Disabilities Act. Persons requesting assistance regarding Cabinet for Health Services' regulations may call toll free 1-800-372-2973 (V/TDD).
- (7) Information relating to the proposed administrative regulation.
 - (a) The statutory authority for the promulgation of an administrative regulation relating to nonemergency medical transportation waiver services and payments is KRS 194:050; 205.520 and EO 96-862.
 - (b) The administrative regulation that the Department for Medicaid Services intends to promulgate will create 907 KAR 3:065. It will, upon approval, provide Medicaid recipients access to medically necessary nonemergency medical transportation services, excluding ambulance stretcher service, through a more efficient and economic sole source, capitated rate process.
 - (c) The necessity, function and conformity of the proposed administrative regulation is as follows: This administrative regulation sets forth the coverage and payment requirements for medically necessary nonemergency medical transportation services, excluding ambulance stretcher service, provided pursuant to a waiver of usual Medicaid requirements.
 - (d) The benefits expected from administrative regulation are: The administrative regulation will permit a statewide capitated transportation network which will be phased in by regions. The regional transportation network will reflect the region's transportation infrastructure and will be geared to the unique needs of that region's population. This EMPOWER Kentucky initiative should offer savings to the cabinet while retaining stability and improving access and coordination in providing transportation to those in need.
 - (e) The administrative regulation will be implemented as follows: The provisions of the transportation network will be accomplished by using brokers who will determine which transportation provider best suits the needs of the individual needing transportation. A referral of eligible individuals will be made by cabinet staff.

VOLUME 25, NUMBER 1 – JULY 1, 1998

Department for Mental Health/Mental Retardation Services

July 1, 1998

- (1) **908 KAR 3:025.** Notification of discharge, transfer or escape of violent offenders.
- (2) The Department for Mental Health/Mental Retardation Services intends to promulgate the administrative regulation governing the subject matter listed above.
- (3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for July 31, 1998 at 9 a.m. in the Department for Public Health Auditorium, Health Services Building, first floor 275 East Main Street, Frankfort, Kentucky.
- (4)(a) The public hearing will be held if:
 1. It is requested in writing by at least 5 persons, or an administrative body, or an association having at least five members; and
 2. A minimum of 5 persons or the administrative body, or association, agrees in writing, to be present at the public hearing.
- (b) If a request for a public hearing and agreement to attend the public hearing are not received from the required number of people at least 10 days prior to July 31, 1998, the public hearing will be canceled:
- (5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Mae B. Lewis, Cabinet Regulation Coordinator, Cabinet for Health Services, 275 East Main Street, 4th West, Frankfort, Kentucky 40621, (502) 564-7905, (502) 564-7573 (Fax).
- (b) On a request for a public hearing, a person shall state:
 1. "I agree to attend the public hearing." or
 2. "I will not attend the public hearing."
- (6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate administrative regulations governing a specific subject matter may file a request to be informed by the administrative body.
- (b) Persons who wish to file this request may obtain a request from the Administrative Regulation Coordinator, Department for Mental Health/Mental Retardation Services, Division of Administration and Financial Management, 100 Fair Oaks Drive (4th Floor), Frankfort, Kentucky 40621.
- (c) NOTE: Requests for Notification and the Notice of Intent to Promulgate shall be made available in another format upon request, in accordance with the American With Disabilities Act. Persons requesting assistance with Cabinet for Health Services' regulations may call toll free 1-800-372-2973 (V/TDD).
- (7) Information relating to the proposed administrative regulation.
 - (a) The statutory authority for the promulgation of an administrative regulation related to notification of the discharge, release, transfer or escape of violent offenders is KRS Chapter 202A.
 - (b) The administrative regulation that the Department for Mental Health/Mental Retardation Services intends to promulgate will set forth procedures that state-owned or contracted psychiatric facilities shall follow to notify local law enforcement authorities and the Department of Corrections if a person charged with or convicted of a violent crime as defined at KRS 439.3401 is discharged, released, transferred or escapes from a facility.
 - (c) The necessity and function of the administrative regulation is as follows: This administrative regulation is necessary to assure required notification of local law enforcement and the Kentucky Department of Corrections when violent offenders are discharged, transferred or have escaped from psychiatric facilities.
 - (d) The benefits expected from this administrative regulation are: Assurance that local authorities are aware of the presence of violent offenders in their community and to enable the Department of Corrections to notify victims when violent offenders leave state psychiatric facilities.
 - (e) The administrative regulation will be implemented as follows: By the Department for Mental Health and Mental Retardation, Cabinet for Health Services.

EMERGENCY ADMINISTRATIVE REGULATIONS NOW IN EFFECT

(NOTE: Emergency administrative regulations expire 170 days from publication or upon replacement, repeal, or withdrawal)

STATEMENT OF EMERGENCY
31 KAR 4:130E

This emergency administrative regulation establishes the procedures for the allowing certain Kentucky voters to receive an absentee ballot or an absentee ballot application by facsimile as required by HB 587 enacted during the 1998 Regular Session. HB 587 took effect immediately and thus the bill requires immediate implementation in order to be in place before the first major election, the May 1998 primary. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The Notice of Intent for 31 KAR 4:130 was filed with the Regulations Compiler on May 20, 1998.

PAUL E. PATTON, Governor
JOHN Y. BROWN III, Secretary of State

GENERAL GOVERNMENT CABINET
State Board of Elections

31 KAR 4:130E. Submitting Absentee Ballot Application by facsimile.

RELATES TO: KRS 117.085

STATUTORY AUTHORITY: KRS 117.015, 117.085

EFFECTIVE: May 20, 1998

NECESSITY, FUNCTION, AND CONFORMITY: KRS 117.085 mandates that the County Boards of Elections accept absentee ballot applications by facsimile. This administrative regulation implements that legislative directive by setting out the provisions for the county clerk and the qualified voter to submit and receive the absentee ballot application by facsimile.

Section 1. Definitions. (1) "Application" shall mean the Federal Post-card Absentee Ballot Application.

(2) "Transmission sheet" shall mean the Official Election Materials - Electronic Transmission Sheet.

Section 2. Who may Request Absentee Ballot Application by Facsimile. (1) Any resident of Kentucky who is a registered voter may transmit a request for an application to the office of the county clerk of the county where the voter is registered via facsimile if the voter meets one (1) of the following criteria:

- (a) Is a resident of Kentucky who is a member of the Armed Forces; or
- (b) Is a dependent of a member of the Armed Forces; or
- (c) Is a citizen residing overseas.

(2) If the voter desires to have the application faxed to him, the voter shall indicate this and the appropriate facsimile number on his request.

Section 3. Requests for Applications. Upon receiving a request for an application from or on behalf of a registered voter who requests an application by facsimile, a county clerk shall complete a transmission sheet which will be supplied by the State Board of Elections. The county clerk shall then complete the county clerk's portion of the application. The county clerk shall then transmit the transmission sheet and the application to the Federal Voting Assistance Program at the number listed on the transmission sheet. The county clerk shall not transmit the application directly to the voter. The Federal Voting Assistance Program will then transmit the application to the voter via facsimile. If the voter does not clearly request that the application be sent via a facsimile machine, then the county clerk may transmit the application by the U.S. mail.

Section 4. Processing a Completed Application by Facsimile. If an application is received by facsimile less than seven (7) days before the applicable election, the county clerk shall not process the application. If a completed Application is received by facsimile not less than seven days before the election, then the county clerk shall affix his seal to the Application. The county clerk shall then verify the voter's eligibility. If the voter is eligible to vote in the current election, then the county clerk shall prepare a faxable copy of the original absentee ballot. The original absentee ballot is then marked "Faxed to Absentee Voter" and retained. The original absentee ballot shall not be reused. The county clerk shall then complete a transmission sheet, the county clerk's portion of the Voter Verification Sheet and the Instructions to Voter Sheet. The faxable copy of the original absentee ballot shall be sent via facsimile, along with the Voter Verification Sheet, the Instructions to Voter Sheet and the transmission sheet to the Federal Voting Assistance Program facsimile number listed on the transmission sheet. The Federal Voting Assistance Program will then transmit the documents to the voter via facsimile. If the county clerk receives a faxed application which does not clearly indicate whether the ballot is to be returned by mail or by facsimile, the county clerk shall return the absentee ballot by U. S. mail.

Section 5. Voter's Instructions on Completing an Absentee Ballot Received via Facsimile. When a voter receives an absentee ballot via facsimile, the voter shall mark the absentee ballot and seal it in an inner envelope. The voter shall then complete and sign the Voter Verification Sheet. If the voter required assistance, the person rendering assistance shall complete the voter assistance section on the Voter Verification Sheet. The voter shall print his or her name, voting address and precinct number on the back of the outer envelope as found on the Voter Verification Sheet. The voter shall then seal the Voter Verification Sheet and the inner envelope containing the absentee ballot in an outer envelope. The voter shall then sign across the back flap of the outer envelope. The voter shall print "Absentee Ballot" on the front of the outer envelope, but shall not obstruct the address area. The voter shall mail the envelope to the address for the county clerk located on the voter instruction sheet. The absentee ballot must be received by the county clerk through the mails in order to be counted.

Section 6. Incorporation by Reference. (1) The following are incorporated by reference:

- (a) Federal Post-card Absentee Ballot Application, 1995;
 - (b) Official Elections Material - Electronic Transmission Sheet, 1996;
 - (c) Voter Verification Sheet, 1998;
 - (d) Instructions to Voter Sheet, 1998.
- (2) These forms may be inspected, copied or obtained at the State Board of Elections, 140 Walnut Street, Frankfort, Kentucky, 40601, Monday through Friday from 8 a.m. through 4:00 p.m., est

JOHN Y. BROWN III, Chairman
ROSS T. CARTER, Assistant Attorney General
APPROVED BY AGENCY: May 19, 1998
FILED WITH LRC: May 20, 1998 at noon

REGULATORY IMPACT ANALYSIS

Contact person: George Russell

(1) Type and number of entities affected: This emergency administrative regulation affects all 120 county clerks and the state board of elections. It also has an indirect impact on all Kentucky voters by making a segment of the voting process more efficient.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the emergency amended administrative regulation will be implemented, to the extent available from the public comments received: There are no direct or indirect costs or savings. There should be no impact on cost of living or employment. No comments, written or oral, were received regarding the emergency amended administrative regulation since no Notice of Intent was required. Implementation is statewide.

(b) Cost of doing business in the geographical area in which the emergency amended administrative regulation will be implemented, to the extent available from the public comments received: There are no direct or indirect costs or savings. There will be no impact on the cost of doing business in Kentucky. No comments, written or oral, were received regarding the emergency amended administrative regulation since no Notice of Intent was required. Implementation is statewide.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: There may be a slight increase in paperwork during the first year of implementation, but after all involved learn the process, this emergency administrative regulation should reduce paperwork overall and streamline the process. Since this regulation only impacts a small segment of voters, the overall impact is very minimal.

2. Second and subsequent years: Overall paperwork should be lessened.

(3) Effects on the promulgating administrative body:

1. First year: The State Board of Elections will only be impacted by learning the new process. Its overall workload will not increase and may decrease in the long run once the process is in place.

(a) Direct and indirect costs or savings:

1. First year: The only direct cost that this emergency administrative regulation has is the cost to the county clerks for faxing certain documents. That cost will be offset by reduced postage and employee time.

2. Continuing costs or savings: The continuing costs or savings are same as those listed above.

3. Additional factors increasing or decreasing costs: None known.

(b) Reporting and paperwork requirements: Other than as discussed above, there are no additional paperwork or reporting requirements associated with this emergency administrative regulation.

(4) Assessment of anticipated effect on state and local revenues: There will be no effect whatsoever upon state or local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: There is no revenue impact upon the agency.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from the emergency amended administrative regulation, on:

(a) Geographical area in which emergency administrative regulation will be implemented: None known.

(b) Kentucky: None known.

(7) Assessment of alternative methods: reasons why alternatives were rejected: This is the only alternative permitted by statute.

(8) Assessment of expected benefits: This emergency regulation will allow more absentee voters to have more access to vote by absentee ballot in a more efficient manner.

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: None

(b) State whether a detrimental effect on environment and public health would result if not implemented: None known.

(c) If detrimental effect would result, explain detrimental effect: Not applicable.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping or duplication: There should be no statute or administrative regulation which conflicts or duplicates this process.

(a) Necessity of proposed regulation if in conflict: None

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable.

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? Tiering was not used. This emergency administrative regulation applies equally to all entities involved. Since this emergency administrative regulation deals with absentee voting and access to the poles, the law will not allow there to be unequal treatment or tiering.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this emergency administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State, what unit, part or division of local government this administrative regulation will affect. This emergency administrative regulation will affect all county boards of elections and all county clerks.

3. State the aspect or service of a local government to which this administrative regulation relates. This emergency administrative regulation relates to the voting process as administered by the local county clerks and the local county boards of elections.

4. Estimate the effect this emergency administrative regulation will have on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues: This emergency regulation which only affects a very minimal number of absentee voters in each county, will not have any recognizable impact on revenues.

Expenditures: This emergency regulation which only affects a very minimal number of absentee voters in each county, will not have any recognizable impact on expenditures. This emergency regulation will not cost very much to implement and may reduce overall cost in the long run by making the absentee voting process more efficient.

STATEMENT OF EMERGENCY 603 KAR 7:080E

The Commonwealth of Kentucky is required by federal law to provide transportation services to persons eligible for state assistance under several of the public aid programs. For the last two (2) years an Empower Kentucky Group has evaluated the effectiveness and safety of the many programs currently in use to provide the federally-mandated transportation services. The group found many areas of Kentucky with inadequate transportation services: in some rural areas nonemergency medical transportation has been available only during the regular working hours on weekdays. As a result, many people felt compelled to contact an emergency medical transportation service or to delay seeking medical treatment until the situation had deteriorated to an emergency. In either case, there was a breakdown in the transportation system and an unnecessary increased cost to Kentucky's tax payers as well as a violation of the federal mandate to provide transportation services. Also, Kentucky Works Program recipients have experienced great difficulty in accessing transportation to jobs or job training. The Empower Kentucky Group found that some of the entities providing the human resource service transportation at state expense have been operating motor vehicles in an unsafe condition. Most of the transportation recipients had been reluctant to complain about doors tied closed, holes in the floorboard, and brakes that could not stop the motor vehicle within a safe distance because this was the only transportation they had available to their medical treatments, rehabilitation services, job development classes, or other human resource services. The three (3) state government cabinets required to pay for the human service transportation delivery, do not have the authority to inspect the safety of the motor vehicles being used to provide this service. Kentucky repealed its annual motor vehicle safety program many years ago. Federal law only requires a formal safety program for the larger commercial motor vehicles and vehicles purchased with funding from the Federal Transit Administration. While many of

Kentucky's larger cities have established safety programs for the taxicab companies operating within their jurisdiction, approximately half of the state's taxicab motor vehicles are not currently subject to any type of safety program or inspection. Last month an individual was seriously injured in Frankfort when the brakes on the taxicab in which he was riding failed. The third area of concern identified by the Empower Kentucky Group related to the duplication of transportation services provided in some areas and the inability of the state to oversee the transportation providers. This frequently resulted in duplicate payments for the same movement of a specific motor vehicle and much higher transportation costs being paid by the state than appeared to be reasonable or necessary. Without the three (3) cabinets being able to coordinate their transportation services, there has been no incentive for the transportation providers to manage their costs. While eliminating this problem is not an emergency, eliminating the other two (2) problems needs to be accomplished on an emergency basis. In order to provide sufficient funding to tackle the other problem areas, this concern must be dealt with at the same time. Therefore, the tying together of the transportation programs of the three (3) cabinets is also needed on an emergency basis. It is in the best interest of the Commonwealth to coordinate the transportation services provided by all state government agencies and to provide the oversight for the entire human service transportation program within the Transportation Cabinet, which is the only state government agency with sufficient statutory authority to regulate the safety and require inspections of the motor vehicles being used to provide the transportation services on behalf of the Commonwealth. It is undoubtedly important that the persons eligible to participate in the public aid programs be able to reach their provided assistance and it is of prime importance that the transportation provided be safe. The Commonwealth of Kentucky must take immediate action to establish the mechanisms which will provide adequate and safe transportation to its citizens in need. An ordinary administrative regulation will not be sufficient since the provision of the adequate and safe transportation programs must be introduced as quickly as possible. The transfer of the responsibility for the transportation programs will be phased in. However, to begin the process, the Transportation Cabinet must establish the contracting procedures and safety requirements by administrative regulation. The other cabinets must at the same time establish a mechanism to provide funding for the transportation services to the Transportation Cabinet. Delaying the implementation of the program until an ordinary administrative regulation could be promulgated would deprive some of the Commonwealth's residents of the safe and adequate transportation to which they are entitled. This emergency administrative regulation will be replaced by an ordinary administrative regulation as soon as possible. The Notice of Intent to promulgate the ordinary administrative regulation will be filed with the Regulations Compiler on May 15, 1998.

PAUL E. PATTON, Governor
JAMES C. CODELL, III, Secretary

TRANSPORTATION CABINET
Department of Highways
Division of Multimodal Programs
Department of Vehicle Regulation
Division of Motor Vehicle Enforcement

603 KAR 7:080E. Human service transportation delivery.

RELATES TO: KRS Chapters 96A, 151B, 157, 163, 194, 195, 202A, 202B, 205, 209, 210, 216, 273, 281, 645, 49 USC Chapter 53
STATUTORY AUTHORITY: KRS 96A.095, 281.600, 281.605, 49 USC Chapter 53

EFFECTIVE: May 15, 1998

NECESSITY, FUNCTION, and CONFORMITY: 49 USC Chapter 53 authorizes the formation and funding of human service transportation deliveries to transportation providers in urban, urbanized, and nonurbanized areas. KRS 96A.095 allows the Transportation Cabinet to accept funding from any source and to use the funding to promote and develop mass transportation services in Kentucky. For the purpose of providing efficient, effective, safe, and coordinated

transportation delivery to clients of the program groupings the Empower Kentucky transportation delivery work group recommended that a single agency be responsible for the transportation component of the programs. The function of this administrative regulation is to implement the procedures required to administer this program. Since many of the transportation providers are required by federal law or regulation to comply with safety and accountability procedures and the Transportation Cabinet is authorized in KRS 281.600 to establish safety criteria for a commercial transportation provider, all of the transportation providers, except a volunteer transportation provider, which receive funding under the provisions of this administrative regulation shall be required to comply with the same safety and accountability requirements.

Section 1. Definitions. (1) "Human service transportation" means the provision of mass transportation and taxi services to transport an individual who is eligible to receive state services from one (1) or more of the programs listed in Section 3 of this administrative regulation.

(2) "Mass transportation" means as defined in KRS 96A.010.

(3) "Mileage reimbursement" means a fixed rate per mile a motor vehicle is operated. The rate shall not exceed the expense of operating the motor vehicle. Mileage reimbursement is not considered to be a benefit or payment of wages.

(4) "Subcontractor" means a transportation provider who contracts with the regional transportation broker/provider to provide human service transportation.

(5) "Transportation broker/provider" means the entity awarded a contract to provide human service transportation in a specified region.

(6) "Volunteer transportation" means transportation provided by a person or entity as a charitable act without the expectation of receiving a benefit or being paid a wage.

Section 2. Human Service Transportation Regions. The Transportation Cabinet shall divide the state into sixteen (16) human service transportation regions. The regions shall consist of the following counties:

(1) Region 1:

- (a) Ballard;
- (b) Calloway;
- (c) Carlisle;
- (d) Fulton;
- (e) Graves;
- (f) Hickman;
- (g) Marshall; and
- (h) McCracken.

(2) Region 2:

- (a) Caldwell;
- (b) Christian;
- (c) Crittenden;
- (d) Hopkins;
- (e) Livingston;
- (f) Lyon;
- (g) Muhlenberg;
- (h) Todd; and
- (i) Trigg.

(3) Region 3:

- (a) Daviess;
- (b) Hancock;
- (c) Henderson;
- (d) McLean;
- (e) Ohio;
- (f) Union; and
- (g) Webster.

(4) Region 4:

- (a) Breckinridge;
- (b) Grayson;
- (c) Hardin;
- (d) Larue;
- (e) Marion;
- (f) Meade; and
- (g) Nelson.

- (5) Region 5:
 - (a) Adair;
 - (b) Allen;
 - (c) Barren
 - (d) Butler;
 - (e) Edmonson;
 - (f) Green;
 - (g) Hart;
 - (h) Logan;
 - (i) Metcalfe;
 - (j) Taylor;
 - (k) Simpson; and
 - (l) Warren.
- (6) Region 6: Jefferson.
- (7) Region 7:
 - (a) Bullitt;
 - (b) Henry;
 - (c) Oldham;
 - (d) Shelby;
 - (e) Spencer; and
 - (f) Trimble.
- (8) Region 8:
 - (a) Anderson;
 - (b) Boyle;
 - (c) Casey;
 - (d) Franklin;
 - (e) Garrard;
 - (f) Jessamine;
 - (g) Lincoln;
 - (h) Mercer;
 - (i) Scott;
 - (j) Washington; and
 - (k) Woodford.
- (9) Region 9:
 - (a) Boone;
 - (b) Campbell;
 - (c) Carroll;
 - (d) Gallatin;
 - (e) Grant;
 - (f) Kenton;
 - (g) Owen; and
 - (h) Pendleton.
- (10) Region 10: Fayette.
- (11) Region 11:
 - (a) Bourbon;
 - (b) Clark;
 - (c) Estill;
 - (d) Harrison;
 - (e) Madison;
 - (f) Montgomery;
 - (g) Nicholas; and
 - (h) Powell.
- (12) Region 12:
 - (a) Bell;
 - (b) Clinton;
 - (c) Cumberland;
 - (d) Knox
 - (e) Laurel;
 - (f) McCreary;
 - (g) Monroe;
 - (h) Pulaski;
 - (i) Rockcastle;
 - (j) Russell;
 - (k) Wayne; and
 - (l) Whitley.
- (13) Region 13:
 - (a) Breathitt;
 - (b) Clay;
 - (c) Harlan;
 - (d) Jackson;
 - (e) Knott;
 - (f) Lee;
 - (g) Leslie;

- (h) Letcher;
- (i) Owsley;
- (j) Perry; and
- (k) Wolfe.
- (14) Region 14:
 - (a) Floyd;
 - (b) Johnson;
 - (c) Magoffin;
 - (d) Martin; and
 - (e) Pike.
- (15) Region 15:
 - (a) Bath;
 - (b) Boyd;
 - (c) Carter;
 - (d) Elliott;
 - (e) Greenup;
 - (f) Lawrence;
 - (g) Menifee;
 - (h) Morgan; and
 - (i) Rowan.
- (16) Region 16:
 - (a) Bracken;
 - (b) Fleming;
 - (c) Lewis;
 - (d) Mason; and
 - (e) Robertson.

Section 3. Service Programs. (1) Human service transportation delivery shall be made available to each eligible participant in the following program groupings:

(a) Nonemergency medical transportation pursuant to KRS Chapter 205 and 907 KAR 3:065, excluding nonemergency ambulance stretcher transportation;

(b) Mental health, mental retardation, development disabilities, or substance abuse services pursuant to KRS Chapters 202A, 202B, 210, or 645;

(c) Kentucky Works Program pursuant to KRS Chapters 194 or 195 and 904 KAR 2:018;

(d) Aging pursuant to KRS Chapters 205, 209, 216, or 273;

(e) Vocational rehabilitation pursuant to KRS Chapters 151B or 157; and

(f) Vocational rehabilitation for the blind pursuant to KRS Chapter 151B or 163.

(2) The state government agency responsible for implementing the programs set forth in subsection (1) of this section shall provide to the Transportation Cabinet:

(a) A list of the persons eligible to receive human services transportation pursuant to the programs set forth in subsection (1) of this section;

(b) The address of each person on the list;

(c) The program for which each person on the list is eligible; and

(d) The administrative regulation setting forth the human service transportation requirements of the program.

(3) In order to deal with this program in an orderly manner and so as not to overwhelm the administrative functions of the transportation provider/brokers and the participating cabinet, the Transportation Cabinet may phase in the implementation of this administrative regulation by region or program.

Section 4. Transportation Broker/Provider. (1) Pursuant to KRS Chapter 45A, the Transportation Cabinet shall select and contract with a transportation broker/provider in each of the sixteen (16) regions set forth in Section 2 of this administrative regulation.

(2) The transportation broker/provider shall operate the human service transportation delivery service pursuant to the Transportation Cabinet's "Kentucky Coordinated Human Service Transportation Delivery Network Plan". This shall include:

(a) Recruiting transportation providers;

(b) Making payment to transportation providers;

(c) Verifying recipient's eligibility;

(d) Determining the appropriate type of transportation for each recipient;

(e) Establishing a reservation confirmation system for recipients; and

(f) Maintaining all records for five (5) years.

(3) The transportation broker/provider shall not enter into an agreement with a subcontractor without the prior approval of the Transportation Cabinet.

(4) If requested, the transportation broker/provider shall provide mileage reimbursement to a volunteer transportation provider.

(5) The Transportation Cabinet shall conduct monitoring activities to ensure compliance with the requirements of the human service transportation delivery programs.

Section 5. Financing. (1) Funding for the human services transportation program shall be provided to the Transportation Cabinet from the following cabinets:

- (a) Health Services;
- (b) Families and Children; and
- (c) Workforce Development.

(2) The level of funding shall be annually determined by considering the following:

- (a) Historical amounts the provision of transportation services has cost the agency;
- (b) Number of persons projected to be eligible for human service transportation;
- (c) Services needed; and
- (d) Negotiations between the cabinets.

Section 6. Program Administration Contracts. (1) Each funding cabinet shall enter into a program administration contract with the Transportation Cabinet.

(2) A program administration contract shall set forth the following provisions:

- (a) Amount of funding for each program;
- (b) Monitoring of a transportation broker/provider;
- (c) Reimbursement through either a capitated rate or fee for service for transportation brokers/providers;
- (d) Recordkeeping, accounting, and reporting procedures to be maintained by the Transportation Cabinet; and
- (e) Annual renegotiation of funding amounts for each program.

Section 7. Safety and Accountability. (1) Each transportation broker/provider and subcontractor shall comply with the safety and operational provisions of the Transportation Cabinet's "Kentucky Coordinated Human Service Transportation Delivery Network Plan".

(2) The following federal regulations are adopted as part of this administrative regulation and shall govern each transportation broker/provider and subcontractor:

- (a) 49 CFR 40, "Procedures for Transportation Workplace Drug and Alcohol Testing Programs" effective October 1, 1997;
- (b) 49 CFR 37, "Transportation Services for Individuals With Disabilities (ADA)" effective October 1, 1997; and
- (c) 49 CFR 38, "Americans With Disabilities Act (ADA) Accessibility Specifications for Transportation Vehicles" effective October 1, 1997.

(3) Each transportation broker/provider and subcontractor subject to the provisions of 601 KAR 1:005 shall comply with the provisions of the administrative regulation.

(4) Each transportation broker/provider and subcontractor not subject to the provisions of 601 KAR 1:005 shall comply with the provisions of the following federal regulations:

- (a) 49 CFR 653, "Prevention of Prohibited Drug Use in Transit Operations" effective October 1, 1997; and
- (b) 49 CFR 654, "Prevention of Alcohol Misuse in Transit Operations" effective October 1, 1997.

(5)(a) Each transportation broker/provider and subcontractor who operates a motor vehicle which is not subject to the provisions of 601 KAR 1:005 shall maintain each of the vehicles in a safe operating condition.

(b) Each motor vehicle being operated pursuant to the provisions of this administrative regulation and which is not subject to the provisions of 601 KAR 1:005 shall be inspected on an annual basis by an automotive technician who has an Automotive Service Excellence (ASE) certification.

(c) Prior to being operated pursuant to this administrative regulation, the transportation broker/provider shall have proof that the motor vehicle has passed a safety inspection by an automotive technician who has an ASE certification.

Section 8. Operating Authority. Except for a volunteer provider, each transportation provider shall have operating authority issued by the Transportation Cabinet pursuant to KRS Chapter 281 or 96A.

Section 9. Adoption and Incorporation by Reference. (1) The Kentucky Transportation Cabinet's "Kentucky Coordinated Human Service Transportation Delivery Network Plan" as effective March 1998 is hereby incorporated by reference as a part of this administrative regulation.

(2) The following federal regulations are adopted in this administrative regulation:

- (a) 49 CFR 653, "Prevention of Prohibited Drug Use in Transit Operations" effective October 1, 1997;
- (b) 49 CFR 654, "Prevention of Alcohol Misuse in Transit Operations" effective October 1, 1997;
- (c) 49 CFR 40, "Procedures for Transportation Workplace Drug and Alcohol Testing Programs" effective October 1, 1997;
- (d) 49 CFR 37, "Transportation Services for Individuals With Disabilities (ADA)" effective October 1, 1997; and
- (e) 49 CFR 38, "Americans With Disabilities Act (ADA) Accessibility Specifications for Transportation Vehicles" effective October 1, 1997.

(3) The documents and materials adopted or incorporated by reference in this section may be viewed, copied, or obtained in the Division of Multimodal Programs, 3rd Floor, State Office Building Annex, 125 Holmes Street, Frankfort, Kentucky 40622. The office hours are 8 a.m. to 4:30 on weekdays. The telephone number is (502) 564-7433.

ED LOGSDON, Commissioner
J.M. YOWELL, P.E., State Highway Engineer
JAMES C. CODELL, III, Secretary
E. JEFFREY MOSLEY, Office of General Counsel
APPROVED BY AGENCY: April 13, 1998
FILED WITH LRC: May 15, 1998 at 4 p.m.

REGULATORY IMPACT ANALYSIS

Contact person: Sandra Pullen Davis

(1) Type and number of entities affected: There are between 500,000 and 600,000 individual citizens of Kentucky who are eligible for Human Services Transportation under the provisions of this administrative regulation. There will be 16 transportation broker/provider's governed by the provisions of this administrative regulation once it is implemented statewide. There are approximately 275 transportation providers (entities such as taxicab companies, transit operators, and community action agencies) who will be affected by this administrative regulation. There are 4 state government cabinets involved in the Human Services Transportation Program.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: Both the Kentucky Workforce Development Cabinet and the Cabinet for Families and Children are affected by this administrative regulation. It is anticipated that more of their clients will have ready access to transportation to work and work-related training in each region as the implementation of this administrative regulation is phased in across the state. While that will have no impact on the cost of living, it should slightly increase the number of persons available for employment.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: There will be an increase in the cost of doing business for some of the transportation providers who will provide service under the provisions of this administrative regulation. Many of the current commercial transportation providers are operating virtually without oversight, i.e., for passenger vehicles with

a seating capacity of less than 15 persons, there is no requirement that the vehicle be inspected; there are no established vehicle safety requirements, and there are no driver qualification standards. Since these entities will now either be contracting with the state or subcontracting to a broker/provider contract, they will have to meet minimum safety requirements and prove that they have. This will increase the operating cost for those companies which have been operating without the appropriate regard to safety.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: Since there has not been a transportation broker/provider before, all of the costs, reporting, and paperwork requirements incurred by this entity will be new. The transportation broker/provider will be required to ensure that each of the transportation providers operating under the umbrella of his contract meets the safety requirements set forth in the administrative regulation. In addition, the broker/provider will have to routinely submit reports to the Transportation Cabinet detailing, among other things, the number of persons requesting transportation in the region, the number of persons provided transportation, the number of requests not complied with or not complied with in a timely manner. Records relating to the recipients of the service who are being transported on behalf of the Workforce Development Cabinet's Departments for the Blind and Vocational Rehabilitation will have to be separately maintained since the cost of transporting these persons will be paid on a "fee for service" basis. All transportation providers will be required to maintain records regarding the driving history of their vehicle operators and the maintenance and inspection of their motor vehicles. Reports on this information will be required to be furnished periodically to the transportation broker/provider.

2. Second and subsequent years: Same as the first year.

(3) Effects on the promulgating administrative body: The Transportation Cabinet is creating a new branch within the Division of Multimodal Programs to oversee this program. Eight persons are being hired to staff the positions created.

(a) Direct and indirect costs or savings: The anticipated administrative cost of operating this branch is expected to be approximately \$1 million each year. In addition, the cost of operating the transportation program, i.e., payment to the transportation broker/providers is expected to be almost \$50 million each year, approximately 5% LESS than the current cost.

1. First year: \$1 million administrative cost + \$47 million operating cost.

2. Continuing costs or savings: \$1 million administrative cost + \$49 million operating cost.

3. Additional factors increasing or decreasing costs: The overall cost of operating the state-supported/supplied transportation is expected to decrease. Since the program is set up to pay to the broker/provider a flat fee per number of eligible recipients of the Medicaid and TANF programs, the Cabinets for Health Services and Families and Children will have a significant reduction in administrative duties. Approximately 156 persons across the state will have their transportation duties removed, thus allowing them to focus more on the social services which are their primary responsibilities. In addition, the cost of the transportation of the eligible recipients will decrease with a unified approach from all of the programs. Overall, by 2002, the Commonwealth expects to see a \$12.5 million savings, primarily through cost avoidance savings.

(b) Reporting and paperwork requirements: The Transportation Cabinet will be required to provide each of the other participating state agencies information, such as the reports identified in (2)(c)1, above as well as an accounting of the Transportation Cabinet's cost of administering the program.

(4) Assessment of anticipated effect on state and local revenues: By the year 2002, there should be a savings of \$12.5 million in the combined transportation programs. However, no effect is anticipated on state or local revenues. Tax revenues could increase if employment rolls increase.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The agencies responsible for providing the transportation will transfer funds to the Transportation Cabinet each year. These are Health Services \$30 million/year for

Medicaid; Families and Children \$12.6-\$15 million/year for TANF; Workforce Development \$600,000 for Vocational Rehabilitation and Department for the Blind. The remaining funds are included in the 1998-2000 Biennial Budget.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: No economic impact is anticipated in a specific area of Kentucky.

(b) Kentucky: Kentucky's workforce should be enforced through an improved access to job training and new jobs. The revenues are expected to increase and the welfare rolls are expected to decrease.

(7) Assessment of alternative methods; reasons why alternatives were rejected: The do-nothing alternative, i.e., each agency continue to provide transportation, was rejected because of the high cost, relative ease of submitting fraudulent claims or abusing the system in other ways, use of unsafe vehicles, and pockets of the state having insufficient transportation for the recipients. Further, the removal of transportation duties from case workers will allow them to concentrate more on their prime responsibilities relating to client eligibility and social services to the clients.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: This administrative regulation will have a statewide effect, when fully implemented. However, the first geographical regions chosen for implementation will experience the benefits first. Public health will be improved by providing 24-hour nonemergency health care transportation throughout the state. In addition, the safety requirements being imposed on the transportation providers will insure that all eligible recipients are offered sufficient and safe transportation.

(b) State whether a detrimental effect on environment and public health would result if not implemented: There would be a detrimental effect on public health if this program is not implemented.

(c) If detrimental effect would result, explain detrimental effect: If this program is not implemented, a negative effect on public health would be anticipated. With the ever-rising costs associated with Medicaid and the federal Welfare Reform mandate that Kentucky reduce its Medicaid costs, without this program there would be far fewer medical services offered to Kentucky's eligible participants. In addition, the number of unsafe motor vehicles being operated in providing this transportation would likely continue to increase if this program were not implemented.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: N/A

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A

(10) Any additional information or comments:

(11) TIERING: Is tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all of the transportation provider/brokers and subcontractors who are subject to its requirements. Disparate treatment of any entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution. However, by allowing each broker/provider to establish the transportation network for that particular region, the differing needs of the regions and the differing capabilities of the transportation providers will be addressed.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State what unit, part or division of local government this administrative regulation will affect. A local government unit which is currently providing nonemergency health transportation, or transportation for K-TAP (Kentucky Transitional Assistance Program),

such as transit authorities, will have to contract with either the Transportation Cabinet or the transportation broker/provider in the region instead of the Department of Medicaid Services or the Cabinet for Families and Children.

3. State the aspect or service of local government to which this administrative regulation relates. Nonemergency health transportation providers and Kentucky Transitional Assistance Program transportation providers. These are almost always a transit authority or unit of local government funded in part through the Transportation Cabinet by the Federal Transit Administration to provide needed transportation services.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation. There will not likely be a fiscal impact on the local government. Transportation providers will be reimbursed a capitated payment per eligible recipient per month as negotiated in the contract with the transportation broker/provider instead of the a payment based on the current mileage reimbursement per trip. This payment will be based on historical cost data and therefore should not have a dramatic effect on revenue.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

STATEMENT OF EMERGENCY

904 KAR 2:018E

The Commonwealth of Kentucky is required by federal law to provide mass transportation services to persons eligible for state assistance under several of the public aid programs. For the last two (2) years an Empower Kentucky Group has evaluated the effectiveness and safety of the many programs currently in use to provide the federally-mandated transportation services. The group found many areas of Kentucky with inadequate transportation services: in some rural areas nonemergency medical transportation has been available only during the regular working hours on weekdays. As a result, many people felt compelled to contact an emergency medical transportation service or to delay seeking medical treatment until the situation had deteriorated to an emergency. In either case, there was a breakdown in the transportation system and an unnecessary increased cost to Kentucky's tax payers as well as a violation of the federal mandate to provide transportation services. The Empower Kentucky Group found that some of the entities providing the human resource service transportation at state expense have been operating motor vehicles in an unsafe condition. Areas of concern that the transportation recipients had been reluctant to complain about included doors tied closed, holes in the floorboard, and brakes that could not stop the motor vehicle within a safe distance. The three (3) state government cabinets required to pay for the human service transportation delivery, do not have the authority to inspect the safety of the motor vehicles being used to provide this service. Kentucky repealed its annual motor vehicle safety program many years ago. Federal law only requires a formal safety program for the larger commercial motor vehicles and vehicles purchased with funding from the Federal Transit Administration. While many of Kentucky's larger cities have established safety programs for the taxicab companies operating within their jurisdiction, approximately half of the state's taxicab motor vehicles are not currently subject to any type of safety program or inspection. Another area of concern identified by the Empower Kentucky Group related to the duplication of transportation services provided in some areas and the inability of the state to oversee the transportation providers. This frequently resulted in duplicate payments for the same movement of a specific motor vehicle and much higher transportation costs being paid by the state than appeared to be reasonable or necessary. Without the three (3) cabinets being able to coordinate their transportation services, there has been no incentive for the transportation providers to manage their costs. While eliminating this problem is not an emergency, eliminating the other two (2) problems needs to be accomplished on an emergency basis. It is in the best interest of the Com-

monwealth to coordinate the transportation services provided by the three (3) state government cabinets and to provide the oversight for the entire human service transportation program with the Transportation Cabinet, which is the only state government agency with sufficient statutory authority to regulate the safety and require inspections of the motor vehicles being used to provide the transportation services on behalf of the Commonwealth. It is undoubtedly important that the persons eligible to participate in the public aid programs be able to reach their provided assistance, and it is of prime importance that the transportation provided be safe. The Commonwealth of Kentucky must take immediate action to establish the mechanisms which will provide adequate and safe transportation to its citizens in need. An ordinary administrative regulation will not be sufficient since the provision of the adequate and safe transportation programs must be introduced as quickly as possible. The transfer of the responsibility for the transportation programs will be phased in. However, to begin the process, the Transportation Cabinet must establish the contracting procedures and safety requirements by administrative regulation. The Cabinet for Families and Children, Cabinet for Health Services, and Workforce Development Cabinet must establish a mechanism to provide funding for the transportation services to the Transportation Cabinet. Delaying the implementation of the program until an ordinary administrative regulation could be promulgated would deprive some of the Commonwealth's residents of the safe and adequate transportation to which they are entitled. This emergency administrative regulation will be replaced by an ordinary administrative regulation.

PAUL E. PATTON, Governor

VIOLA P. MILLER, Secretary

CABINET FOR FAMILIES AND CHILDREN

Department for Social Insurance

Division of Management & Development

904 KAR 2:018E. Transportation services for Kentucky Works.

RELATES TO: KRS 205.200(2), 205.211, 42 USC. 601 et seq.

STATUTORY AUTHORITY: KRS 96A.095, 194.050(1), 205.200(2), 281.600, 42 USC 601 et seq., 49 USC Chap. 53, EO 96-862

EFFECTIVE: May 15, 1998

NECESSITY, FUNCTION, AND CONFORMITY: Executive Order 96-862, effective July 2, 1996, reorganized the Cabinet for Human Resources and placed the Department for Social Insurance and its programs under the Cabinet for Families and Children. The Cabinet for Families and Children is required to administer the public assistance programs. KRS 205.200(2) requires that the conditions of eligibility to receive K-TAP money grants be prescribed by administrative regulations in conformity with 42 USC 602 et seq. and federal regulations. This administrative regulation sets forth the requirements for receiving Kentucky Works transportation services.

Section 1. Definitions. (1) "Approved Kentucky Works activities" means participation in an allowable activity pursuant to 904 KAR 2:370, Section 2(2)(c).

(2) "Cabinet" means the Cabinet for Families and Children.

(3) "Component" means services and activities pursuant to 904 KAR 2:370, Section 2(2)(c).

(4) "Component preparation" means the period in which assessment, testing, completion of the transitional assistance agreement Form KW-202 "K-TAP Transitional Assistance Agreement", incorporated by reference in 904 KAR 2:370, and referrals for removal of concerns takes place.

(5) "Kentucky Transitional Assistance Program (K-TAP)", Kentucky's Temporary Assistance for Needy Families (TANF) program, means a money payment program for children pursuant to 904 KAR 2:006, Section 1;

(6) "Kentucky Works" means a program which assists recipients of K-TAP in obtaining education, training, experience and employment necessary to leave public assistance;

(7) "Precomponent" means a waiting period between the dates

of component assignment and component commencement.

(8) "Preemployment" means a waiting period between the dates of hiring and employment commencement.

(9) "Transitional extension" means a period of up to ninety (90) days subsequent to the discontinuance of the K-TAP case in which supportive service payments may continue if:

(a) The case is not discontinued due to fraudulent activity; and

(b) The case is not discontinued due to failure to comply with procedural requirements; and

(c) The Kentucky Works participant elects to continue the approved component activity in which he is engaged at the time of discontinuance.

Section 2. Transportation Services in Kentucky Works Components. Transportation services shall be provided in the following situations:

(1) Precomponent;

(2) Component preparation;

(3) Component participation while the K-TAP case remains active;

(4) Transitional extension; or

(5) On-the-job training (OJT) participants discontinued from K-TAP, until the end of the component placement.

Section 3. Transportation Authorization. (1) If free transportation is unavailable which meets the needs of the recipient, transportation shall be provided for individuals participating in approved Kentucky Works activities pursuant to 904 KAR 2:017 or initially in limited areas until statewide implementation is completed pursuant to Section 2 of this administrative regulation and 603 KAR 7:080.

(2) In precomponent, if necessary to guarantee that the transportation arrangement shall not be lost, transportation services shall be provided for the period of:

(a) Up to two (2) weeks prior to the scheduled start of component activity; and

(b) Up to one (1) month during a break in component activity if subsequent component activity is scheduled to begin within that period.

Section 4. Restrictions on Authorization of Transportation Services. Transportation services shall not be provided if the participant is penalized or sanctioned for noncompliance with Kentucky Works activities, as specified in 904 KAR 2:370.

Section 5. Hearings and Appeals. Applicants or recipients of benefits under programs described herein who are dissatisfied with any action or inaction on the part of the cabinet shall have the right to a hearing under 904 KAR 2:055.

DIETRA PARIS, Interim Commissioner

VIOLA P. MILLER, Secretary

CHARLES P. LAURENCE, Attorney

APPROVED BY AGENCY: May 6, 1998

FILED WITH LRC: May 15, 1998 at 4 p.m.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Marty Mason, Director

(1) Type and number of entities affected: The affected entities are families who apply for or receive transportation services for Kentucky Works under the Temporary Assistance for Needy Families (TANF) block grant program called Kentucky Transitional Assistance Program (K-TAP). The funding to implement work requirements and supportive services provisions for participation in an approved Kentucky Works activity, for TANF block grant program, is now included in Title IV-A. In Kentucky the TANF block grant program to implement the work requirements and provide supportive services is called Kentucky Works. As of November 1997, there were a total of 55,225 K-TAP cases. In November 1997, there were approximately 42,873 adults in those cases and 1,145 unemployed parent cases with 2,254 adults in those cases. Supportive services are provided to enable participation by K-TAP recipients who are in an approved Kentucky Works activity.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received: To be determined after the publication of the Notice of Intent.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received: To be determined after the publication of the Notice of Intent.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing cost (note any effects upon competition) for the:

1. First year following implementation: Individuals who are applicants or recipients of K-TAP, who are required to participate in Kentucky Works provisions will not have any additional compliance, reporting or paperwork requirements due to complying with the requirements for receiving transportation services than what is currently required.

2. Second and subsequent years: Same

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings to the agency: Transportation payments will change based on a monthly payment rate basis instead of a flat per day rate. The counties where the Human Services Transportation Delivery process has been implemented will result in capitated per recipient per month rate. There is no other cost impact other than system changes and a change to the referral process, which cannot be determined at this time.

1. First year: Amount budgeted for SFY 1998 \$6,228,400.

2. Continuing cost or savings: Amount budgeted for SFY 1999 \$12,690,000; amount budgeted for SFY 2000 \$12,690,000.

3. Additional factors increasing or decreasing cost: The implementation of the Human Services Transportation Delivery process is expected to contain or decrease the costs associated with the delivery of transportation supportive services. The mandatory increases in annual Kentucky Works participation rates and the subsequent increase in the needed transportation supportive services will be offset by an administrative contract with the Transportation Cabinet in which the regional broker/provider will be responsible for all covered Kentucky Works transportation needs based on the payment of a per member per month capitated rate.

(b) Reporting and paperwork requirements: Compliance with existing reporting requirements will be enhanced. The tracking of encounter data with the delivery of transportation services will give a more concise report of cost of utilization of Kentucky Works transportation supportive services. Paperwork will decrease as a result of implementation of the Kentucky Human Services Transportation Delivery Process. Paperwork functions currently required by the supportive service payment process will be eliminated. Paperwork responsibilities will be shifted to the regional broker/provider with no cost to the department.

(4) Assessment of anticipated effect on state and local revenues: To be determined after the publication of the Notice of Intent.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Federal funds and state funds.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: To be determined after the publication of the Notice of Intent.

(b) Kentucky: To be determined after the publication of the Notice of Intent.

(7) Assessment of alternative methods; reasons why alternatives were rejected: Assessment of alternative methods resulted in a multicabinet initiative to provide coordinated human service transportation delivery through a program administration contract with the Transportation Cabinet.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: This administrative regulation is needed to comply with the mandated work requirements found in 42 USC 601 et seq. and to provide suffi-

cient and safe transportation to K-TAP recipients who are required to participate in the Kentucky Works Program.

(b) State whether a harmful effect on environment and public health would result if not implemented: A detrimental effect on public health would result if this amendment is not implemented due to the need for sufficient and safe transportation for K-TAP recipients who are required to participate in the Kentucky Works Program and to comply with the mandated work requirements found in 42 USC 601 et seq.

(c) If detrimental effect would result, explain detrimental effect: In order for K-TAP recipients who are required to participate in the Kentucky Works Program to obtain the necessary skills to become economically self-sufficient before the five year time limit expires, availability of necessary transportation must exist. The current process does not insure availability of needed transportation or provide sufficient and safe transportation to K-TAP recipients. Also, this administrative is needed to comply with the mandated work requirements found in 42 USC 601 et seq.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: None

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: None

(10) Any additional information or comments: This administrative regulation will allow eligible Kentucky Transitional Assistance Program (K-TAP) recipients to be referred to a regional capitated transportation network. The regional transportation network will reflect the region's transportation infrastructure and will be geared to the unique needs of that region's population. This network should offer savings to the cabinet while retaining stability in providing transportation to those in need. In those areas where the regional capitated transportation network exists, the broker/provider will provide the transportation on a capitated basis instead of direct payments to recipients.

(11) TIERING: Is tiering applied? No. Tiering was not applied since application of policy is applied in a like manner for all individuals as set forth through federal requirements.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 USC 601 et seq.
2. State compliance standards. KRS 205.200
3. Minimum or uniform standards contained in the federal mandate. None
4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate. No
5. Justification for the imposition of the stricter standards, or additional or different responsibilities or requirements. None

STATEMENT OF EMERGENCY 904 KAR 2:380E

The administrative regulation 904 KAR 2:380E, Child Support Enforcement Program application process, implements requirements needed to comply with the mandated requirements pursuant to the Title IV-D state plan as required by 42 USC 651 et seq. The passage of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 calls for the implementation of the provisions of the Uniform Interstate Family Support Act (UIFSA). The Cabinet for Families and Children is required to include the mandatory provisions of 42 USC 651 et seq. in the Title IV-D state plan. The deadline imposed by the Department of Health and Human Services for the complete Title IV-D state plan for the implementation of UIFSA is July 1, 1998. Therefore, in order to comply with this deadline by the U.S. Department of Health and Human Services and to prevent the loss of federal funds, this emergency administrative regulation must be placed in effect immediately in order to amend the requirements of 904 KAR 2:380. An ordinary administrative regulation would not allow sufficient time to meet the time frames. This emergency ad-

ministrative regulation will be replaced by an ordinary administrative regulation.

PAUL E. PATTON, Governor
VIOLA P. MILLER, Secretary

CABINET FOR FAMILIES AND CHILDREN Department for Social Insurance Division of Management and Development

904 KAR 2:380E. Child Support Enforcement Program application process.

RELATES TO: KRS 205.520-205.625, 205.710-205.800, 205.992, 407.010 to 407.480, 45 CFR 302.31, 302.33-302.36, 302.50, 302.65, 302.80, 303.2, 303.3, 303.15, 303.30-303.31, 303.70

STATUTORY AUTHORITY: KRS Chapter 13B, 194.050, 205.710 to 205.800, 213.046, 405.430, 405.520, 406.021, 406.025, EO 96-862, PL 104-193, HB 132 (1998), HB 159 (1998)

EFFECTIVE: June 15, 1998

NECESSITY, FUNCTION, AND CONFORMITY: KRS 205.712(2) requires the cabinet to establish and enforce child support obligations and laws. [The Cabinet for Families and Children shall administer the Child Support Enforcement Program in accordance with KRS 205.740 to 205.800.] KRS 205.795 and 405.520 provide that the secretary shall develop administrative regulations to operate the CSEP in accordance with federal law and regulations. [Executive Order 96-862, effective July 2, 1996, reorganizes the Cabinet for Human Resources and places the Department for Social Insurance and the Division of Child Support Enforcement under the Cabinet for Families and Children.] This administrative regulation specifies the process by which an individual may apply for child support services and the scope of services available.

Section 1. Kentucky Transitional Assistance Program (K-TAP) Process for Child Support Services. (1) As a condition of eligibility for assistance, each applicant for, or recipient of K-TAP shall make an assignment of rights to the state for support that the applicant or recipient may have from any other person.

(a) The assignment shall include all members of the case for whom support rights apply.

(b) The assignment shall be completed at the time of application for K-TAP benefits.

(2) A client shall cooperate in all phases of child support activity if his needs are included in a K-TAP case, as specified in 904 KAR 2:006, Section 16.

(3) If the client states that "good cause" for noncooperation exists, he shall have the opportunity to establish his claim according to criteria contained in 904 KAR 2:006, Section 16.

(4) The child support agency shall open a case and determine needed action within twenty (20) calendar days of receipt of a referral from the public assistance agency.

(5) Services provided to a K-TAP recipient through the Child Support Enforcement Program shall include:

(a) Location of the noncustodial parent, or obligor;

(b) Establishment of paternity based upon the receipt of either:

1. A court order; or

2. A notice from the Office of Vital Statistics that a signed, notarized voluntary acknowledgement of paternity has been registered;

(c) Establishment of child support and medical support obligations;

(d) Review and modification of child support and medical support orders when appropriate;

(e) Enforcement of child support, medical support, and maintenance obligations; and

(f) Collection and distribution of:

1. Child support amounts; and

2. Medical support amounts; and

3. Maintenance if the client is the spouse or ex-spouse.

Section 2. Foster Care Process for Child Support Services. (1) The child support agency shall collect and distribute child support on behalf of children for whom:

- (a) The state is making foster care maintenance payments as required by 42 USC 657; and
- (b) An assignment of rights has been made.
- (2) The Department for Social Services worker with responsibility for the foster care child shall:
 - (a) Cooperate with the child support agency;
 - (b) Complete and forward the foster care child support referral;
 - (c) Complete and forward the foster care child support change of status form when changes occur which relate to the child support process; and
 - (d) Forward copies of court documents pertaining to the child support process.
- (3) "Good cause" for nonenforcement of child support for a foster care recipient exists when criteria contained in 904 KAR 2:006, Section 16 are met.
- (4) Evidence for determination of good cause shall be as specified in 904 KAR 2:006, Section 16(5).
- (5) The child support agency shall open a case and determine needed action within twenty (20) calendar days of receipt of a referral from the Department for Social Services.
- (6) Services available to a foster care recipient shall include:
 - (a) Location of the noncustodial parent, or obligor;
 - (b) Establishment of paternity;
 - (c) Establishment of child support and [or] medical support obligations;
 - (d) Enforcement of child support and medical support obligations;
 - (e) Review and modification of child support and [or] medical support orders when appropriate; and
 - (f) Collection and distribution of child support payments.

Section 3. Medicaid Only Process for Child Support Services. (1) When a public assistance referral is received, the child support agency shall obtain the following information:

- (a) The Medicaid case number;
 - (b) The name of the noncustodial parent, or obligor;
 - (c) The Social Security number of the noncustodial parent, or obligor;
 - (d) The name and Social Security number of the child;
 - (e) The home address of the noncustodial parent, or obligor; and
 - (f) The name and address of the noncustodial parent's, or obligor's, place of employment.
- (2) An application for Medicaid shall include an assignment of rights for medical support, as specified in 907 KAR 1:011, Section 8.
- (3) Except for a custodial parent who is pregnant or in her post partum period as specified in 907 KAR 1:011, Section 9, a custodial parent shall cooperate in all phases of medical support activity if his needs are included in a Medicaid case.

(4) If the Medicaid client states that "good cause" for noncooperation exists, he shall have the opportunity to establish the claim according to criteria contained in 904 KAR 2:006, Section 16.

(5) Evidence for determination of good cause shall be as specified in 904 KAR 2:006, Section 16(5).

(6) The child support agency shall open a case and determine needed action within twenty (20) calendar days of the receipt of a referral from a public assistance agency.

- (7) Services available to Medicaid only clients shall include:
 - (a) Location of the noncustodial parent, or obligor [absent parent];
 - (b) Establishment of paternity;
 - (c) Establishment of medical support obligations;
 - (d) Enforcement of medical support obligations;
 - (e) Review and modification of medical support aspects of support obligations when appropriate;
 - (f) Application for health insurance coverage through an employer for the child if court or administratively ordered but not acquired by either parent;
 - (g) Collection of medical support payments if ordered.

Section 4. Services to an Individual not Receiving K-TAP. (1) Child support services shall be made available to any individual who:

- (a) Assigns rights for medical support only; or
- (b) Files a nonpublic assistance application for services with the child support agency; or

- (c) Is a Medicaid only client who requests and gives consent for child support services in addition to medical support; or
 - (d) Has been receiving child support services as a public assistance recipient and is no longer eligible for public assistance; or
 - (e) Is receiving Medicaid only nonfoster care services.
- (2) Notification shall be made within five (5) working days to the family no longer eligible for public assistance that services shall continue unless the child support agency is notified to the contrary by the family.

Section 5. Application Process for a Nonpublic Assistance Individual. (1) Upon the request of a nonpublic assistance applicant, an application packet shall be given to the applicant.

(a) If the request is made in person, the packet shall be provided the same day.

(b) If the request is made by telephone or mail, the packet shall be sent to the applicant within five (5) working days of the request.

(2) The application packet shall include:

- (a) Nonpublic assistance application form;
- (b) Nonpublic assistance services fact sheet;
- (c) Civil rights information pamphlet.

(3) The applicant shall be required to complete and return a notarized authorization and acknowledgment of no representation form.

(4) Medical support services shall be provided with the consent of a nonpublic assistance client. When a nonpublic assistance child support application is provided to an individual requesting child support services, the child support agency shall:

(a) Inform the client that medical support establishment and enforcement are [is] available; and

(b) Obtain the following information:

- 1. The name of the noncustodial parent, or obligor;
- 2. The name and Social Security number of the noncustodial parent, or obligor;
- 3. The Social Security number of the child;
- 4. The home address of the noncustodial parent, or obligor; and
- 5. The name and address of the noncustodial parent's, or obligor's, place of employment.

(5) If enforcement becomes necessary and a lien is to be filed in order to collect past due support, the child support agency shall take an assignment of support rights and authority to collect from an individual receiving nonpublic assistance child support services as prescribed by KRS 205.720(1).

(6) The child support agency shall open a case within twenty (20) calendar days of receipt of a nonpublic assistance application.

(7) The nonpublic assistance application fee may not exceed twenty-five (25) dollars and shall be determined by an income fee scale.

(a) The income fee scale shall be based on the previous year's net income.

(b) If the previous year's net income is unknown, the fee shall be based on an estimate of the previous year's net income.

(c) The following fees shall be charged for services other than location only:

Yearly Net Income	Fee
\$0 to 2,000	\$5.00
2,001 to 3,000	8.00
3,001 to 4,000	10.00
4,001 to 5,000	13.00
5,001 to 6,000	15.00
6,001 to 7,000	18.00
7,001 to 8,000	20.00
8,001 to 9,000	23.00
9,001 and above	25.00

Section 6. Parent Locator Service and Associated Fee for Service.

(1) For all public assistance cases referred to the child support agency or nonpublic assistance cases for which child support services are being provided, the child support agency shall attempt to locate a noncustodial parent, or obligor, or a noncustodial parent's, or obligor's sources of income and assets when location is necessary to take the next appropriate action.

(2) Location services may be provided upon application by a non-custodial parent as described in KRS 205.730.

(3) For a nonpublic assistance case in which location is the only service requested, a ten (10) dollar nonrefundable fee shall be charged. For parental kidnapping requests, a twenty (20) dollar nonrefundable fee shall be charged.

Section 7. Interstate Process for Child Support Services. (1) The child support agency shall extend to interstate child support cases the same services available to intrastate cases. These services shall include:

- (a) Location of the noncustodial parent, or obligor;
- (b) Location of the custodial parent for establishment of paternity;
- (c) Establishment of paternity;
- (d) Establishment of a child support obligation for:
 - 1. A K-TAP or foster case;
 - 2. A Medicaid only case with the consent of the recipient; and
 - 3. A nonpublic assistance case.
- (e) Establishment of medical support obligation for:
 - 1. An public assistance case; or
 - 2. A nonpublic assistance case with the consent of the applicant.
- (f) Enforcement of support orders;
- (g) Review and modification of child support or medical support orders, or both, if appropriate; and
- (h) Collection and distribution of current and past due support payments.

(2) To enforce child support laws between states the child support agency shall:

- (a) Receive, distribute, and monitor all incoming interstate cases and apprise other states of changes in interstate cases; and
- (b) Establish an interstate central registry responsible for:
 - 1. Receiving and distributing incoming interstate requests; and
 - 2. Responding to inquiries received from other states on interstate cases.

(3) Within ten (10) working days of receipt of an interstate case, the central registry shall:

- (a) Ensure review of submitted documentation for completeness;
- (b) Forward the case to the appropriate functional unit for case processing;
- (c) Acknowledge receipt of the case and request missing documentation from the initiating state, if needed;
- (d) Inform the initiating state of where the case has been forwarded for action.

(4) If case documentation is inadequate, the case shall be forwarded for any necessary action pending additional information from the initiating state.

(5) The central registry shall respond to other state inquiries within five (5) working days of receipt of request.

(6) The initiating agency state shall:

(a) Use long-arm statutory authority to establish paternity and child support if statutory authority exists;

(b) Within twenty (20) calendar days of determining that the non-custodial parent, or obligor, is in another state, forward any necessary information and the case to the responding state's central registry for action.

(c) Provide the agency in the responding state sufficient and accurate information and documentation and the Interstate Child Support Enforcement Transmittal Form.

(d) Provide the child support agency or central registry in the responding state with any additional requested information or notify the responding state when the information will be provided within thirty (30) calendar days of receipt of the request.

(e) Notify the agency in the responding state within ten (10) working days of receipt of new information by submitting updated forms or additional information.

(7) The responding state agency shall establish and use caseload procedures which ensure provision of necessary services including maintenance of case records. The agency shall periodically review program performance on interstate cases to evaluate the effectiveness of responding state procedures.

(8) The state shall ensure that the organizational structure and agency staff are adequate to provide administration and supervision to provide the following functions:

- (a) Intake;
 - (b) Establishment of paternity;
 - (c) Establishment of a child support obligation or [and] medical support obligation, or both;
 - (d) Location;
 - (e) Collection of current and past due child support, medical support, and maintenance payments;
 - (f) Certification for federal or state tax refund intercept, or both;
 - (g) Monitoring;
 - (h) Enforcement of child support obligations, medical support obligations, and maintenance; and
 - (i) Review and modification of child support and medical support obligations.
- (9) Within seventy-five (75) calendar days of receipt of interstate forms and documentation, a responding state shall:

(a) Provide location services if requested and documentation is adequate; or

(b) If documentation is inadequate:

1. Notify the initiating state of necessary additions or corrections; and

2. Process the interstate case to the extent possible pending initiating state action;

(c) Within ten (10) working days of locating a noncustodial parent, or obligor, in a different jurisdiction within the state, the agency shall forward appropriate forms and documentation to that jurisdiction and notify the initiating state of its action.

(d) Within ten (10) working days of locating a noncustodial parent, or obligor, in a different state, the agency shall return the work and documentation to the initiating state's central registry, or, at the direction of the initiating state, forward forms and documentation to the central registry of the state where the noncustodial parent, or obligor, [absent parent] has been located. The initial responding state's central registry shall be notified where the case has been sent.

(e) The responding state shall provide any necessary services as it would in an intrastate case by:

- 1. Establishing paternity and obtaining judgment for prenatal costs, birthing expenses, and genetic tests upon establishment;
- 2. Establishing a child support obligation or medical support obligation, or both;

3. Reviewing cases for possible modification;

4. Processing and enforcing orders referred by another state;

5. Collecting and monitoring any support payment from a non-custodial parent, or obligor and forwarding collections to a location specified by the initiating state not later than fifteen (15) calendar days from the initial date of receipt;

6. Providing sufficient identifying information to identify the case and date of collection or identify that the payment was made through state income tax refund offset and include the responding state's identifying code;

7. Providing timely notice to the initiating state in advance of formal hearings to establish or adjust a child support order;

8. Notifying the initiating state within ten (10) working days of receipt of new information; and

9. Notifying the interstate central registry in the responding [initiating] state when a case is closed.

(10) The child support agency in the responding state shall pay the costs it incurred in processing state agency interstate cases. However, the child support agency of the initiating state shall pay the costs of genetic testing to establish paternity.

(a) If the responding state is successful in establishing paternity, that state's child support agency shall attempt to obtain a judgment for the cost of genetic tests from the party who denied paternity.

~~(b) [Recoupment of these costs may also be shared by each party as long as the total amount recouped does not exceed the actual costs of the genetic tests.]~~

~~(c) If costs are recovered, the responding state shall reimburse the initiating state.~~

~~(d) The responding state shall identify fees and costs deducted from support payments when forwarding payments to the initiating state.~~

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

VOLUME 25, NUMBER 1 – JULY 1, 1998

(a) KA-125, (11/96 Edition), Cabinet for Families and Children;
(b) KA-125 Supplement A, (11/96 Edition), Cabinet for Families and Children;
(c) KA-125 Supplement B, (11/96 Edition), Cabinet for Families and Children;
(d) KA-125, Supplement C, (11/96 Edition), Cabinet for Families and Children;
(e) PA-121, (12/96 Edition), Cabinet for Families and Children;
(f) CS-11 "Authorization and Acknowledgment of No Legal Representation", (8/96 Edition), Cabinet for Families and Children;
(g) CS-33 "Non-K-TAP Application", (2/97 Edition), Cabinet for Families and Children;
(h) CS-37 "Non-K-TAP IV-D Services Fact Sheet", (8/97 Edition), Cabinet for Families and Children;
(i) DSS-1260 "Title IV-E and Child Support Referral", (11/96 Edition), Cabinet for Families and Children;
(j) DSS-1263 "Title IV-E and Child Support Change of Status", (11/96 Edition), Cabinet for Families and Children;
(k) CS-65 "Statement of Income and Resources", (2/97 Edition), Cabinet for Families and Children;
(l) CS-98 "General Testimony", (5/98 Edition), Cabinet for Families and Children;
(m) CS-100 "Uniform Support Petition", (5/98 Edition), Cabinet for Families and Children;
(n) CS-103 "Child Support Enforcement Transmittal #1 - Initial Request", (5/98 Edition), Cabinet for Families and Children;
(o) CS-109 "Custodial Parent Termination Affidavit", 2/97 Edition, Cabinet for Families and Children;
(p) CS-136 "Health Insurance Information Request", (Edition 2/97), Cabinet for Families and Children; and
(q) CS-140 "Assignment of Rights and Authorization to Collect Support", (10/96 Edition), Cabinet for Families and Children.
(2) This material may be inspected, copied, or obtained at the Department for Social Insurance, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m. [Material incorporated by Reference. (1) Forms necessary to establish a child support or medical support case through the Division of Child Support Enforcement are incorporated effective March 15, 1995. These forms include:
(a) KA-125, revised 11/96;
(b) KA-125 Supplement A, revised 11/96;
(c) KA-125 Supplement B, revised 11/96;
(d) KA-125 Supplement C, revised 11/96;
(e) PA-121, revised 12/96;
(f) CS-11, revised 12/96;
(g) CS-33, revised 2/97;
(h) CS-37, revised 2/97;
(i) DSS-1260, revised 11/96;
(j) DSS-1263, revised 11/96;
(k) CS-65-65.1, revised 2/97;
(l) CS-98, revised 2/97;
(m) CS-100, revised 2/97;
(n) CS-103, revised 2/97;
(o) CS-109, revised 2/97;
(p) DS-136, revised 10/96;
(q) CS-140, revised 10/96;
(2) These forms may be inspected and copied at the Department for Social Insurance, 275 East Main Street, Frankfort, Kentucky 40621. Office hours are 8 a.m. to 4:30 p.m.]

DIETRA PARIS, Interim Commissioner

VIOLA P. MILLER, Secretary

KAREN V. MURPHY, Attorney

APPROVED BY AGENCY: June 1, 1998

FILED WITH LRC: June 15, 1998 at 11 a.m.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Marty Mason, Director

(1) Type and number of entities affected: This administrative regulation specifies the process by which an individual may apply for child support services and the scope of services available. The changes incorporated within this regulation will affect interstate child

support enforcement cases. It is estimated that approximately 10,000 cases require interstate enforcement at least annually.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented to the extent available from public comments received. To be determined after the publication of the Notice of Intent.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented to the extent available from public comments received. To be determined after the publication of the Notice of Intent.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: No increase in reporting or paperwork is anticipated as UIFSA (Uniform Interstate Family Support Act) procedures will replace existing URESA (Uniform Reciprocal Enforcement of Support Act) procedures, when applicable.

2. Second and subsequent years: No increase in reporting or paperwork is anticipated as UIFSA procedures will replace existing URESA procedures.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: Training costs of \$143,700 are estimated for training staff of the Division of Child Support Enforcement and staff of contracting officials to provide UIFSA (Uniform Interstate Family Support Act) training.

2. Continuing costs or savings: Cost of changing incorporated forms is considered normal operating cost and is provided by the enacted budget.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: There is no anticipated increase in reporting or paperwork anticipated as UIFSA policies will replace existing URESA (Uniform Reciprocal Enforcement of Support Act) policies, when applicable.

(4) Assessment of anticipated effect on state and local revenues: None

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Federal funding-66%; agency funding-34%

(6) To the extent available from public comments available, economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: To be determined after the publication of the Notice of Intent.

(b) Kentucky: To be determined after the publication of the Notice of Intent.

(7) Assessment of alternative methods; reasons why alternatives were rejected: As these changes are mandatory, there are no alternatives to consider.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: Implementation of this administrative regulation will affect interstate child support cases and will result in a more effective means of enforcing child support orders.

(b) State whether a detrimental effect on environment and public health would result if not implemented: Failure to implement this administrative regulation will have a detrimental effect.

(c) If detrimental effect would result, explain detrimental effect: Failure to implement provisions of 42 USC 651 et seq. by July 1, 1998, will result in a loss of federal funds. Further, enforcement of interstate child support cases will not be as effective without the implementation of this administrative regulation.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? No Tiering was not applied because the Child Support Enforcement Program requires uniformity in the application of policy as specified in 45 CFR 302.33(c).

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes
2. State whether this administrative regulation will affect the local government or only a part or division of the local government. This regulation contains requirements for the contracting officials of local governments.
3. State the aspect or service of local government to which this administrative regulation relates. Contracting officials for child support enforcement shall receive UIFSA training and shall provide modification reviews requested for interstate cases according to the Uniform Interstate Family Support Act.
4. How does this administrative regulation affect the local government or any service it provides? This regulation requires the contracting officials to provide child support enforcement program services as specified by contract, including the review of interstate cases for modification according to the Uniform Interstate Family Support Act.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 USC 666(f) and the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, PL 104-193.
2. State compliance standards. There are no differing or additional state compliance standards.
3. Minimum or uniform standards contained in the federal mandate. This administrative regulation specifies the process by which an individual may apply for child support services and the scope of services available.
4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate. No
5. Justification for the imposition of the stricter standards, or additional or different responsibilities or requirements. None

STATEMENT OF EMERGENCY 907 KAR 3:065E

The Commonwealth of Kentucky is required by federal law to provide mass transportation services to persons eligible for state assistance under several of the public aid programs. For the last two (2) years an Empower Kentucky Group has evaluated the effectiveness and safety of the many programs currently in use to provide the federally-mandated transportation services. The group found many areas of Kentucky with inadequate transportation services: in some rural areas nonemergency medical transportation, excluding nonemergency stretcher ambulance, has been available only during the regular working hours on weekdays. As a result, many people felt compelled to contact an emergency medical transportation service or to delay seeking medical treatment until the situation had deteriorated to an emergency. In either case, there was a breakdown in the transportation system and an unnecessary increased cost to Kentucky's taxpayers as well as a possible violation of the federal mandate to provide transportation services. The EMPOWER Kentucky Group found that some of the entities providing the human resource service transportation at state expense have been operating motor vehicles in an unsafe condition. Most of the transportation recipients had been reluctant to complain about doors tied closed, holes in the floorboard, and brakes that could not stop the motor vehicle within a safe distance because this was the only transportation they had available to their medical treatments, rehabilitation services, job development classes, or other human resource services. The three (3) state government cabinets required to pay for the human service transportation delivery, do not have the authority to inspect the safety of the motor vehicles being used to provide this

service. Kentucky repealed its annual motor vehicle safety program many years ago. Federal law only requires a formal safety program for the larger commercial motor vehicles and vehicles purchased with funding from the Federal Transit Administration. While many of Kentucky's larger cities have established safety programs for the taxicab companies operating within their jurisdiction, approximately half of the state's taxicab motor vehicles are not currently subject to any type of safety program or inspection. Last month an individual was seriously injured in Frankfort when the brakes on the taxicab in which he was riding failed. The third area of concern identified by the EMPOWER Kentucky Group relates to the duplication of transportation services provided in some areas and the inability of the state to effectively regulate the transportation providers. This frequently results in duplicate payments for the same movement of a specific motor vehicle and much higher transportation costs being paid by the state than appeared to be reasonable or necessary. Without the four (4) cabinets being able to coordinate their transportation services, there has been no mechanism for the transportation providers to manage their costs. While eliminating this later problem is not an emergency, eliminating the two (2) problems needs identified previously does need to be accomplished on an emergency basis. In order to provide sufficient funding to tackle the other problem areas, this concern must be dealt with at the same time. Therefore, the tying together of the transportation programs of the four (4) cabinets is also needed on an emergency basis. It is in the best interest of the Commonwealth to coordinate the transportation services provided by all state government agencies and to provide the oversight for the entire human service transportation program with the Transportation Cabinet, the state government agency with statutory authority to regulate the safety and inspections of the motor vehicles used to provide the transportation services on behalf of the Commonwealth. It is important that the persons eligible to participate in the public aid programs be able to reach their required destination, it is of prime importance that the transportation provided be safe. The Commonwealth of Kentucky must take immediate action to establish the mechanisms which will provide adequate and safe transportation to its citizens in need. An ordinary administrative regulation will not be sufficient since the provision of the adequate and safe transportation programs must be introduced as quickly as possible. The transfer of the responsibility for the transportation programs will be phased in. To begin the process, the Transportation Cabinet must establish the contracting procedures and safety requirements by administrative regulation. The Cabinet for Health Services must establish a mechanism to provide funding for the transportation services to the Transportation Cabinet. Delaying the implementation of the program until an ordinary administrative regulation could be promulgated would deprive some of the Commonwealth's residents of the safe and adequate transportation to which they are entitled. This emergency administrative regulation shall be replaced by an ordinary administrative regulation filed with the Regulations Compiler.

PAUL E. PATTON, Governor
JOHN H. MORSE, Secretary

CABINET FOR HEALTH SERVICES Department for Medicaid Services Division of Administration and Development

907 KAR 3:065E. Nonemergency medical transportation waiver services and payments.

RELATES TO: KRS 194.025, 195.025, 281.014, 42 CFR 431.53, 440.710, 42 USC 1396n(b)

STATUTORY AUTHORITY: KRS 194.050, 205.520, HB 132 of 1998 GA

EFFECTIVE: May 15, 1998

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health Services, Department for Medicaid Services, has responsibility to administer the Medicaid Program. 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.

This administrative regulation establishes the coverage and payment requirements for nonemergency medical transportation services, excluding ambulance stretcher services, provided pursuant to a waiver of Section 1915(b) of the Social Security Act, approved by the Health Care Financing Administration to waive Medicaid requirements related to nonemergency medical transportation of Medicaid requirements.

Section 1. Definitions. (1) "Capitated rate" means one (1) amount paid each month for each Medicaid recipient covered by the agreement reached with the provider under authority of the waiver. The capitated rate shall not be a statewide rate but shall be set individually for each human service transportation delivery region as established in 603 KAR 7:080.

(2) "Department" means the Department for Medicaid Services or its designee.

(3) "Human service transportation" is defined as the provision of mass transportation and taxi services to transport an individual who is eligible to receive Medicaid services.

(4) "Nonemergency medical transportation" means transportation service provided by a provider who is a:

(a) Specialty carrier who transports, through specially equipped vehicles, an individual who needs a wheelchair. The equipment required shall be a van or van-type vehicle with a ramp or lift for wheelchairs as defined in KRS 281.014;

(b) Specialty carrier who transports an individual who due to physical or mental impairment needs to be accompanied from his door to the door of the medical provider;

(c) Transportation provider who provides door-to-door transportation in areas where fixed routes are not available; or

(d) Fixed-route mass-transit system that provides transportation to the general public and Medicaid recipients.

(5) "Risk" means the difference between the capitated payment and the expense incurred by the human service transportation delivery broker or provider to provide the nonemergency medical transportation services.

(6) "Transportation broker or provider" is defined as the entity awarded a contract to provide human service transportation in a specified region.

(7) "Waiver authority" means the provisions contained in 42 USC 1396n(b).

Section 2. Interagency Agreement. The Department for Medicaid Services may enter into an agreement with the Transportation Cabinet for the provision of nonemergency medical transportation to a Medicaid recipient in the human service transportation regions established in 603 KAR 7:080.

Section 3. Reimbursement. (1) The Transportation Cabinet shall be reimbursed at a monthly capitated rate set by the department for each Medicaid recipient residing in a county covered by the contract.

(2) The capitated rate shall not exceed the Medicaid Program's usual aggregate cost on a projected statewide basis of providing non-emergency medical transportation services to the covered group of recipients.

(3) The transportation broker or provider is responsible for all risk associated with the provision of the nonemergency medical transportation.

Section 4. Subcontracted Services. (1) The Transportation Cabinet may subcontract with a transportation broker in accordance with 603 KAR 7:080, Section 4.

(2) The transportation broker or provider and a subcontracted provider, except for a volunteer provider, shall have operating authority issued by the Transportation Cabinet pursuant to KRS Chapter 281 or 96A to operate in the region covered by the contract.

(3) The certification for a provider under contract shall be publicly displayed at the site of the transportation.

(4) Provider under contract shall notify within five (5) working days the broker and the department of any change in operating authority requested by the Transportation Cabinet.

Section 5. General Medicaid Coverage Provisions. (1) Non-emergency medical transportation to and from Medicaid-covered services (except pharmacy services), including the Early and Periodic Screening, Diagnosis and Treatment (EPSDT) Program, shall be provided to a Medicaid-eligible individual who is unable to:

(a) Provide his own transportation; and

(b) Find free transportation.

(2) The recipient shall contact the transportation broker or provider for the area for approval and scheduling of transportation.

Section 6. Appeals. A Medicaid recipient shall be provided the right to an administrative hearing if dissatisfied with any action or inaction on the part of a transportation broker or provider or a sub-contracted provider in accordance with 907 KAR 1:563.

Section 7. Implementation. The provisions of this administrative regulation shall be applicable for nonemergency transportation waiver services provided pursuant to a contract in accordance with KRS Chapter 45A and Section 2 of this administrative regulation for the region specified on or after June 1, 1998.

LARRY A. MCCARTHY, Deputy Commissioner

JOHN H. MORSE, Secretary

JOHN H. WALKER, Attorney

APPROVED BY AGENCY: April 21, 1998

FILED WITH LRC: May 15, 1998

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Trish Howard or Karen Doyle

(1) Type and number of entities affected: All Medicaid recipients and all nonemergency medical transportation providers participating in the Medicaid Program.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: To be determined after the publication of the Notice of Intent.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: To be determined after the publication of the publication of the Notice of Intent.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: The sole source provider will be required to collect encounter data and provide it to the department for all services provided.

2. Second and subsequent years: The department is responsible for obtaining an independent assessment of the cost effectiveness of the waiver and its impact on recipient access.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: \$1,346,135.00(savings) in geographic areas implemented.

2. Continuing costs or savings: \$2,692.270.00 (savings)

3. Additional factors increasing or decreasing costs: Costs to the providers will be decreased because the sole source provider will manage the provision of the transportation services. For example, transportation will be supplied by the provider nearest the geographic location of the recipient and more than one recipient will be transported at the same time. Cost to the department will decrease because the payment is capitated at less than the prior fee-for-service expenditures.

(b) Reporting and paperwork requirements: An independent study to demonstrate that the provision of nonemergency transportation services are not negatively affected by the waiver is required by the Health Care Financing Administration.

(4) Assessment of anticipated effect on state and local revenues: To be determined after the publication of the Notice of Intent.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Savings realized from implementation of this administrative regulation are federal and state

VOLUME 25, NUMBER 1 – JULY 1, 1998

matching funds. Federal matching funds of 50% equaling \$230,950.00 and state matching funds of 50% equaling \$230,950.00 will be saved in administration. Federal matching funds of 70.37% equaling \$1,204,138.00 and state matching funds of 29.63% equaling \$503,132.00 will be saved in Medicaid benefits.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: To be determined after the publication of the Notice of Intent.

(b) Kentucky: To be determined after the publication of the Notice of Intent.

(7) Assessment of alternative methods; reasons why alternatives were rejected: Provisions were approved in the HCFA waiver.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: This regulation will provide improved access to and safety of non-emergency medical transportation by allowing management of the service provision by a sole source provider who is familiar with the needs of the local population.

(b) State whether a detrimental effect on environment and public health would result if not implemented: Yes

(c) If detrimental effect would result, explain detrimental effect: Not implementing this program will deprive Medicaid recipients of increased access to nonemergency medical transportation and assurance of safe transportation vehicles with trained drivers.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

state must comply with federal requirements contained in 42 USC 1396 et seq.

2. State compliance standards. This administrative regulation does not set compliance standards.

3. Minimum or uniform standards contained in the federal mandate. This administrative regulation does not set minimum or uniform standards.

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 set stricter requirements.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. No additional standard or responsibilities are imposed.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State whether this administrative regulation will affect the local government or only a part or division of the local government: Only part of local government.

3. State the aspect or service of local government to which this administrative regulation relates: Any nonemergency nonstretcher public transportation provider would have to contract with the human service transportation delivery broker for that region instead of the DMS.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation. Providers will be reimbursed a capitated payment per trip as negotiated in the contract with the sole source broker/provider instead of current mileage reimbursement per trip. This payment will be based on historical cost data and should not have a dramatic effect on revenues.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Pursuant to 42 USC 1396a et seq., the Commonwealth of Kentucky has exercised the option to establish a Medicaid Program for indigent Kentuckians. Having elected to offer Medicaid coverage, the

ADMINISTRATIVE REGULATIONS AS AMENDED BY PROMULGATING AGENCY
AND REVIEWING SUBCOMMITTEE

ARRS = Administrative Regulation Review Subcommittee
IJC = Interim Joint Committee

COUNCIL ON POSTSECONDARY EDUCATION
(As Amended at ARRS, June 9, 1998)

13 KAR 2:045. Determination of residency status for admission and tuition assessment purposes.

RELATES TO: KRS Chapter 13B, 164.020, 164.030, 164A.330(9)
STATUTORY AUTHORITY: KRS 164.020(8)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 164.020(8) requires the Council on Postsecondary Education to determine tuition and approve the minimum qualifications for admission to a state-supported postsecondary education institution [the public institutions of higher education] and authorizes the Council to set different tuition amounts for residents of Kentucky and for nonresidents [of Kentucky]. This administrative regulation establishes the procedure and guidelines for determining the residency status of a student who is seeking admission to, or who is enrolled at, a state-supported postsecondary education institution [public institution of higher education and for each student residency determination].

Section 1. Definitions. (1) "Academic term" means a division of the school year during which a course of studies is offered, and includes a semester, quarter, or single, consolidated summer term as defined by the institution.

(2) "Continuous enrollment" means enrollment in a state-supported postsecondary education institution [college or university] at the same degree level for consecutive terms, excluding summer term, since the beginning of the period for which continuous enrollment is claimed unless a sequence of continuous enrollment is broken due to extenuating circumstances beyond the student's control, including serious personal illness or injury, or illness or death of a parent.

(3) "Degree level" means enrollment in a course or program which could result in the award of a:

(a) Certificate, diploma or other program [programs] at an [a technical] institution;

(b) Baccalaureate degree or lower including enrollment in a course by a nondegree seeking postbaccalaureate student;

(c) [(b)] Graduate degree or graduate certification other than a first-professional degree in law, medicine, dentistry or "Pharm. D"; or

(d) [(e)] Professional degree in law, medicine, dentistry, or "Pharm. D".

(4) "Demonstration of Kentucky domicile and residency" means the presentation of documented information and evidence sufficient to prove by a preponderance of the evidence that a person is domiciled in Kentucky and is a resident of Kentucky.

(5) "Dependent person" means a person who cannot demonstrate financial independence from parents or persons other than a spouse and who does not meet the criteria established in Section 5 of this administrative regulation.

(6) "Determination of residency status" means the decision of a postsecondary education institution [college or university] and a subsequent decision by the Council on Postsecondary Education including an administrative hearing, if appropriate, that results in the classification of a person as a Kentucky resident or as a nonresident for admission and tuition assessment purposes.

(7) "Domicile" means a person's true, fixed, and permanent home and is the place where the person intends to remain, and to which the person expects to return if absent without intending to establish a new domicile elsewhere.

(8) "Full-time employment" means continuous employment for at least forty-eight (48) weeks at an average of at least thirty (30) hours per week.

(9) "Independent person" means a person who demonstrates financial independence from parents or persons other than a spouse

and who can meet the criteria established in Section 5 of this administrative regulation.

(10) "Institution" [~~institution of higher education~~, or "college"] means an entity defined in KRS 164.001(10) [all entities offering instruction and conferring degrees or diplomas beyond the secondary school level, including four (4) year colleges or universities, two (2) year institutions including community colleges, and postsecondary vocational-technical schools;] if the type of institution is not expressly stated.

(11) "Kentucky residency" or "Kentucky resident" means the result of a determination by an institution or by the Council on Postsecondary Education that a person is a resident of Kentucky for the purpose of tuition assessment and for the purpose of admission to that institution, if applicable.

(12) "Nonresident" means a person who is domiciled outside of Kentucky or who currently maintains legal residence outside Kentucky or who has not met the criteria for Kentucky residency established in this administrative regulation.

(13) "Preponderance of the evidence" means the greater weight of evidence, or evidence which is more credible and convincing to the mind.

(14) "Parent" means one (1) of the following:

(a) A person's father or mother; or

(b) A court-appointed legal guardian if:

1. The guardianship is recognized by an appropriate court within the United States;

2. [if] There was a relinquishment of the rights of the parents; and

3. The [independent of a] guardianship was not established primarily to confer Kentucky residency on the person.

(15) "Residence" or "residency" means the place of abode of a person and the place where the person is physically present most of the time for a noneducational purpose in accordance with Section 3 of this administrative regulation.

(16) "Sustenance" means living expenses including room, board, maintenance, transportation, and also may include educational expenses including tuition, fees, books, and supplies.

Section 2. Scope (1) State-supported postsecondary education [Public] institutions [~~of higher education~~] were established and are maintained by the Commonwealth of Kentucky primarily for the benefit of qualified residents of Kentucky. The substantial commitment of public resources to postsecondary [higher] education is predicated on the proposition that the state benefits significantly from the existence of an educated citizenry. As a matter of policy, access to postsecondary [higher] education shall be provided so far as feasible at reasonable cost to an individual who is domiciled in Kentucky and who is a resident of Kentucky. [~~bona fide residents of the state;~~]

(2) The Council on Postsecondary Education requires a student who is neither domiciled in nor a resident of Kentucky to meet higher admission standards and to pay a higher level of tuition than resident students.

(3) [The Commonwealth of Kentucky has a significant interest in providing for the needs of Kentucky's citizenry in graduate, health related and other professional programs. Limited space and the high cost of professional programs, combined with the need to ensure an equitable number of professional health practitioners in the state, makes Kentucky especially vigilant in residency determinations at the graduate and professional program levels of instruction. This administrative regulation is predicated on a basic assumption that an individual domiciled in Kentucky is more likely to practice professionally in the Commonwealth than is a student who is not domiciled in Kentucky and who is primarily located in the Commonwealth for the purpose of attending an institution.]

(4) This administrative regulation applies to all student residency determinations regardless of circumstances, including the Southern

Regional Education Board contract spaces, reciprocity agreements, where appropriate, and academic common market programs.

Section 3. Determination of Residency Status; General Rules. (1) A determination of residency shall include:

(a) An initial determination of residency status by an institution during the [a college or university at the time of] admission process or upon enrollment in an institution for a specific academic term or for admission into a specific academic program;

(b) Each administrative and residency review committee determination made by an institution;

(c) A reconsideration of a determination of residency status by an [the] institution based upon a changed circumstance;

(d) An intermediate review by the Appeals Officer of the Council on Postsecondary Education if requested by the student; and

(e) An administrative hearing conducted in accordance with the provisions of KRS Chapter 13B and 13 KAR 2:070, if requested by the student.

(2)(a) An initial determination of residency status shall be based upon the facts in existence when the credentials established by an institution for admission for a specific academic term have been received and during the period of review by the institution. ~~Provided, however, that an institution may delay an initial determination of residency status for graduate, doctoral or professional school applicants until the applicant is admitted to the program;~~

(b) An initial determination of residency status shall be based on:

1. Information derived from admissions materials;

2. Other materials required by an institution and which are consistent with this administrative regulation; or

3. Other information available to the institution from any source.

(3) An individual seeking a determination of Kentucky residency status shall demonstrate that status by a preponderance of the evidence.

(4) A determination of residency status shall be based upon verifiable circumstances or actions.

(5) Evidence and information cited as the basis for Kentucky domicile and residency shall accompany the application for a determination of residency status.

(6) A student classified as a nonresident shall retain that status until the student is officially reclassified by an [the] institution or the Council on Postsecondary Education, as appropriate.

(7) A student may apply for a review of a determination of residency status once for each academic term.

(8) If an institution has information that a student's residency status may be incorrect, the institution shall review and determine the student's correct residency status.

(9) If the Council on Postsecondary Education has information that an institution's determination of residency status for a student may be incorrect, it may require the institution to review the circumstances and report the results of that review.

(10) An institution shall impose a penalty or sanction against a student who gives incorrect or misleading information to an institutional official, including payment of nonresident tuition for each academic term for which resident tuition was assessed based on an improper determination of residency status. The penalty [and] may also include:

(a) ~~Criminal prosecution;~~

(b) Student discipline by the institution through a policy written and disseminated to students; or

(b) ~~Criminal prosecution.~~

~~[(c) Payment of nonresident tuition for each academic term for which resident tuition was assessed based on an improper determination of residency status.]~~

Section 4. Presumptions Regarding Residency Status. (1) In making a determination of residency status, it shall be presumed that a person is a nonresident if:

(a) A person is, or seeks to be, an undergraduate student and whose admissions records show the student to be a graduate of an out-of-state high school;

(b) A person's admission records indicate the student's residence to be outside of Kentucky at the time of application for admission;

(c) A person moves to Kentucky primarily for the purpose of enrollment in an institution ~~[of higher education];~~

(d) A person moves to Kentucky and within twelve (12) months enrolls in an institution of higher education more than half time; or

(e) A person has a continuous absence of one (1) year from the state.

(2) A presumption arising from subsection (1) of this section shall be overcome by a demonstration of Kentucky domicile and residency.

Section 5. Determination of Whether a Student is Dependent or Independent. (1) In a determination of residency status, an institution shall first determine whether a student is dependent or independent. This provision is predicated on the assumption that a dependent person lacks the financial ability to live independently of the person upon whom the student is dependent and therefore lacks the ability to form their requisite intent to establish domicile.

(2) In determining the dependent or independent status of a person, the following information shall be considered as well as other relevant information available at the time the determination is made:

(a) 1. That the person has not been claimed as a dependent on the federal or state tax returns of a parent or other person for the year preceding the date of application for a determination of residency status; or

2. ~~[(b) 1.]~~ That the person is no longer claimed by a parent or other person as a dependent or as an exemption for federal and state tax purposes; and

(b) ~~2.]~~ That the person has financial earnings and resources independent of both parents or a person other than an independent [a] spouse necessary to provide for the person's own sustenance.

(3) ~~[In determining the independent or dependent status of an individual, financial earning and resources from state, federal and other student financial assistance programs shall be excluded.]~~

~~[(4)]~~ An individual who enrolls in an institution [college] immediately following graduation from high school and remains enrolled shall be presumed to be a dependent person unless the contrary is evident from the information submitted.

~~[(4) [(5) [(4)]]]~~ Domicile may be inferred from the student's permanent address, parent's mailing address, or location of high school of graduation.

~~[(5) [(6) [(5)]]]~~ Marriage to an independent [a] person domiciled in and who is a resident of Kentucky shall be a factor considered by an institution in determining whether a student is dependent or independent.

~~[(6) [(7)]]~~ A gift [Gifts] from, [or] made, or cosigned by a parent or family member other than an independent [a] spouse, if used for sustenance of the student:

(a) Shall not be considered in establishing a student as independent; and

(b) Shall be a factor in establishing that a student is dependent.

Section 6. Effect of a Determination of Dependent or Independent Status on a Determination of Residency Status. (1) The effect of a determination that a person is dependent shall be as follows:

(a) The domicile and residency of a dependent person shall be the same as either parent. The domicile and residency of the parent shall be determined in the same manner as the domicile and residency of an independent person.

(b) The domicile and residency of a dependent person whose parents are divorced, separated, or otherwise living apart shall be [a resident of] Kentucky if either parent is domiciled in and is a resident of Kentucky regardless of which parent has legal custody or is entitled to claim that person as a dependent pursuant to Kentucky income tax provisions.

(c) 1. If the parent or parents of a dependent person are Kentucky residents and are domiciled in Kentucky but subsequently move from the state, the dependent person shall be considered a resident of Kentucky while in continuous enrollment at the degree level in which currently enrolled.

2. If continuous enrollment is broken or the current degree level is completed, the dependent person's residency status shall be reassessed when the circumstances detailed in subparagraph 1 of this paragraph are present.

(2) If ~~[an independent person;]~~ the sole parent or both parents of a dependent person moves out of state, Kentucky domicile and residency, having been previously established, shall be retained until steps are taken to establish domicile and residency elsewhere.

Section 7. Member of Armed Forces of the United States, Spouse and Dependents; Effect on a Determination of Residency Status. (1) A member, spouse, or dependent of a member whose domicile and residency was Kentucky at the time of induction into the Armed Forces of the United States, and who maintains Kentucky as home of record and permanent address, shall be entitled to Kentucky residency status:

(a) During the time of active service; or ~~[and]~~
(b) If the member, spouse, or dependent returns to this state within six (6) months of the date of the member's discharge from active duty.

(2)(a) A member, spouse or dependent of a member of the Armed Forces of the United States stationed in Kentucky on active military orders shall be considered a Kentucky resident while the member is on active duty in this state pursuant to those orders if the member is not:

1. Stationed in Kentucky for the purpose of enrollment at an institution ~~[of higher education];~~ or

2. On temporary assignment of less than one (1) year.

(b) A member, spouse or dependent of a member, shall not lose Kentucky residency status if the member is thereafter transferred on military orders while the member, spouse or dependent requesting the status is in continuous enrollment at the degree level in which currently enrolled.

(3) A person's residency status established pursuant to this section shall be reassessed if the qualifying condition is terminated.

Section 8. Status of Nonresident Aliens; Visas and Immigration.

(1)(a) A person holding a permanent residency visa or classified as a political refugee shall establish domicile and residency in the same manner as another person.

(b) Time spent in Kentucky and progress made in fulfilling the conditions of domicile and residency prior to obtaining permanent residency status shall be considered in establishing Kentucky domicile and residency.

(2) A person holding a nonimmigrant visa with designation A, E, G, H, I, L, N, O, P, R, S, TD or TN shall establish domicile and residency the same as another person.

(3)(a) An independent [A] person holding a nonimmigrant visa with designations B, C, D, F, J, K, M, or Q shall not be classified as a Kentucky resident, because that person does not have the capacity to remain in Kentucky indefinitely and therefore cannot form the requisite intent necessary to establish domicile within the meaning of this administrative regulation.

(b) A dependent person holding a visa as described in paragraph (a) of this subsection, but who is a dependent of a parent holding a visa as described in subsection (2) of this section, shall be considered as holding the visa of the parent.

(c) A dependent person holding a visa described in subsection (2) of this section or paragraph (a) of this subsection, if a parent is a citizen of the United States and is a resident of and domiciled in Kentucky, shall be a resident of Kentucky for the purposes of this administrative regulation.

Section 9. Beneficiaries of a Kentucky Educational Savings Plan Trust. A beneficiary of a Kentucky Educational Savings Plan Trust shall be granted residency status if the beneficiary meets the requirements of KRS 164A.330(9).

Section 10. Criteria Used in a Determination of Residency Status.

(1) A determination of Kentucky domicile and residency shall be based upon verifiable circumstances or actions. A single fact shall not be paramount, and each situation shall be evaluated to identify those facts which are essential to the determination of domicile and residency.

(2) The following facts, although not conclusive, shall have probative value in their entirety and shall be individually weighted, appropriate to the facts and circumstances in each determination of residency;

(a) Acceptance of an offer of full-time employment or transfer to an employer in Kentucky or contiguous area while maintaining residence and domicile in Kentucky;

(b) Continuous physical presence in Kentucky while in a nonstudent status for the twelve (12) months immediately preceding the start [commencement] of the academic term for which a classification of Kentucky residency is sought;

(c) 1. Filing of Kentucky resident income tax return for the calendar year preceding the date of application for a change in residency status; or

2. Payment of Kentucky withholding taxes while employed during the calendar year for which a change in classification is sought;

(d) Full-time employment of at least one (1) year while living in Kentucky;

(e) Attendance as a full-time, nonresident student at an out-of-state institution ~~[of higher education]~~ based on a determination by that school that the person is a resident of Kentucky;

(f) Abandonment of a former domicile or residence and establishing domicile and residency in Kentucky with attendance at an institution ~~[of higher education]~~ following and incidental to the change in domicile and residency;

(g) Obtaining licensing or certification for a professional and occupational purpose in Kentucky;

(h) Payment of real property taxes in Kentucky;

(i) Ownership of real property in Kentucky, if the property was used by the student as a residence preceding the date of application for a determination of residency status;

(j) Long-term lease of at least twelve (12) consecutive months of noncollegiate housing;

(k) Marriage of an independent student to a Kentucky resident; ~~[and]~~

(l) Continued presence in Kentucky during academic breaks; and
(m) The extent to which a student is dependent on student financial aid in order to provide basic sustenance.

(3) Except as provided in subsection (4) of this section, the following facts, because of the ease and convenience in completing them, shall have limited probative value in a determination that a person is domiciled in and is a resident of Kentucky:

(a) Kentucky automobile registration;

(b) [(m)] Kentucky driver's license; and

(c) [(n)] Continued presence as a resident in Kentucky during academic breaks; and

(e)] Registration as a Kentucky voter.

(4) [Provided, however, that] The absence of a fact contained in subsection (3) of this section shall have significant probative value in determining that a student is not domiciled in or is not a resident of Kentucky.

(5) ~~[(3)]~~ Kentucky residency status shall not be conferred by the performance of an act which is incidental to fulfilling an educational purpose or by an act which is performed as a matter of convenience. Mere physical presence in Kentucky, including living with a relative or friend, shall not be sufficient evidence of domicile and residency.

Section 11. Effect of a Change in Circumstances on Residency Status. (1) If a person becomes independent or if the residency status of a parent or parents of a dependent person changes, an [the] institution shall reassess residency either upon a request by the student or a review initiated by an institution.

(2) Upon transfer to ~~[or matriculation from;]~~ a Kentucky ~~[public]~~ institution ~~[of higher education]~~, a student's residency status shall be reassessed by the receiving institution.

(3) A reconsideration of a determination of residency status for a dependent person shall be subject to the provisions for continuous enrollment, if applicable.

Section 12. Institutional Requirements; Designation of Office and Officer and Publication of the Administrative Regulation. (1) Each institution shall designate:

(a) A person or office at the institution with responsibility for a determination of residency status at that institution; and

(b) An administrative office or person with delegated day-to-day responsibility for administration of this administrative regulation.

(2) The designation of an administrative office or person pursuant to subsection (1) of this section shall be in writing setting forth the duties and responsibilities. A copy shall be provided to the Council on Postsecondary Education.

(3) Each institution shall establish an operational policy for the determination of residency status which shall be filed with the Council on Postsecondary Education and which shall include:

(a) Procedures describing the steps in the initial determination of residency status;

(b) Designated responsibilities of each institutional official;

(c) Responsibilities of a person requesting:

1. Admission to an [the] institution or to an academic program; or

2. [.] [requesting] A change in residency status;

(d) Procedures for the operation of a residency review committee created pursuant to Section 13 of this administrative regulation;

(e) Timetables and deadlines for student and institutional responses to a request for a review of an institutional determination of residency status;

(f) Training of institutional officials responsible for a determination of residency status; and

(g) The role of the residency review committee.

(4) The administrative regulation shall be published in its entirety in all of each institution's catalogs and disseminated to each student.

(5) Copies of the administrative regulation shall be maintained in the office designated pursuant to subsection (1) of this section and shall be made available to each student requesting Council on Postsecondary Education review of an institution's initial determination, review or reconsideration of residency status.

Section 13. Establishment of a residency review committee by an institution. (1) Each institution shall establish a residency review committee, which shall be a standing committee, to review, evaluate, and act upon:

(a) A student appeal related to an initial determination of residency status;

(b) A recommendation of the administrative office or person designated pursuant to Section 12 of this administrative regulation, that the residency review committee review, evaluate, and act upon an initial determination of residency status; and

(c) A student request for a reconsideration of a residency classification because of a changed circumstance.

(2) The Kentucky Community and Technical College System may establish uniform operating policies and procedures for each branch within the system as defined in KRS 164.001(11) including a provision for separate institutional residency review committees.

(3) Membership on the residency review committee shall include at least one (1) faculty and one (1) student member.

(4) ~~{3}~~ The policies and procedures of an institution's residency review committee shall be in writing and published for student use.

(5) ~~{4}~~ A copy of the document authorizing and creating an institution's residency review committee, and a copy of the operating policies and procedures of the residency review committee shall be provided to the Council on Postsecondary Education.

Section 14. Student Responsibilities. (1) A student shall register under the proper residency classification which includes the following actions:

(a) Raising a question in a timely manner concerning residency classification;

(b) Making application for change of residency classification in a timely manner with the designated office or person at the institution; and

(c) Notifying the designated office or person at the institution immediately upon a change in residency.

(2) If a student fails to notify an institutional official of a change in residency, an institutional official may investigate and evaluate the student's current residency status.

(3)(a) If a student fails to provide, in a timely manner, information required by an institution in a determination of residency status or by the Council on Postsecondary Education in an appeal of a determination of residency status, the student shall be notified by the institution or by the Council on Postsecondary Education, as appropriate, that

the review has been canceled and that a determination has been made.

(b) Notification shall be made by registered mail, return receipt requested.

(c) Notification shall be made within ten (10) calendar days after the deadline for receipt of materials has passed.

(4) A student shall not be entitled to appeal a determination of residency status if the determination made by an institution or by the Council on Postsecondary Education is made because a student has failed [for a failure] to meet published deadlines for the submission of information as set forth in subsection (3) of this section. A student may request a review of a determination of residency status in a subsequent academic term.

Section 15. Procedures for an Initial Determination of Residency Status, an Institutional Review of Residency Status and for a Reconsideration of a Determination of Residency Status. (1) Application for a review of a determination of residency status shall be made to the administrative office or person designated by an [the] institution pursuant to Section 12 of this administrative regulation.

(2) The application, with supporting documentation, shall be made by the student no later than [within] thirty (30) calendar days after the first day of classes of the academic term for which a review of a determination of residency status is sought.

(3) An application shall consist of:

(a) An affidavit authorized by the Council on Postsecondary Education and submitted by the student or the parent of a dependent student asserting the claim for a determination of residency status and asserting that the documentation and information are accurate and true; and

(b) Information and documentation required by an institution and consistent with this administrative regulation which is necessary to substantiate a request for a change in a determination of residency status.

(4)(a) An application shall be first reviewed by the office or person designated by the institution pursuant to Section 12 of this administrative regulation.

(b) If a student asks, in writing and in a manner set forth by the institution consistent with this administrative regulation, to appeal the decision of the designated office or person, the residency review committee shall review, evaluate, and act upon that appeal.

(c) An application for a review of residency status which is not submitted in a timely manner~~;~~ shall result in a determination of residency status consistent with an initial determination of residency status.

(5) The decision of the designated office or person, or of the residency review Committee shall be set forth in a letter that includes [include]:

(a) Findings of fact;

(b) Determination of whether the applicant is deemed to be a "dependent person" or "independent person"; ~~[and]~~

(c) Whether the applicant is a resident or nonresident, and the reasons consistent with institutional policy and this administrative regulation; and

(d) A citation of the specific section of the administrative regulation that provided the basis for the institutional determination.

(6) If a student has requested an institutional review of a residency determination, the student shall be notified in writing, by registered or certified mail, of the decision of the administrative officer designated by the institution or the residency review committee, as appropriate, within forty-five (45) calendar days after receipt of a person's application for a change.

(7) A change in a determination of residency shall not be made retroactive beyond the academic term in which the request for a change is made.

(8) A student shall have the right to appeal a decision of the residency review committee to the Council on Postsecondary Education pursuant to Sections 16, 17, and 18 of this administrative regulation.

(9) An institution shall, by written policy, establish deadlines for the submission of written documentation by a person seeking a review of an initial determination of residency status and shall not consider an appeal which does not conform to the timetable requirements for

documentation and for the process established in the institution's operational policy.

Section 16. Procedure for Appeal to the Council on Postsecondary Education and Intermediate Review by the Council on Postsecondary Education Appeals Officer. (1) The President of the Council on Postsecondary Education shall designate a person on the staff of the Council on Postsecondary Education to serve as an appeals officer.

(2) The appeals officer's review of an institutional determination of residency status shall be to determine whether the residency review committee's written decision was supported by a preponderance of evidence and whether the decision conforms [conformed] to this administrative regulation.

(3) Upon receipt of notice from the residency review committee of an institution's [the] decision by certified or registered mail, the student shall have fourteen (14) calendar days to appeal that decision to the Council on Postsecondary Education by giving notice in writing to the office or person designated by the institution to administer this administrative regulation.

(4) An appeal filed more than fourteen (14) calendar days after receipt of the decision of the residency review committee shall be dismissed and the decision of the residency review committee shall be final.

(5) The office or person designated by the institution pursuant to Section 12 of this administrative regulation shall be responsible for forwarding to the Council on Postsecondary Education a complete copy of the student's file within fourteen (14) calendar days of the receipt of a notice of appeal. The student may review the content of the file before it is forwarded to the Council on Postsecondary Education.

Section 17. Determination of the Council on Postsecondary Education Appeals Officer. (1) Except as provided in subsection (2) of this section, the appeals officer shall make a determination, based solely on the written record submitted, to affirm or reverse the residency review committee's decision.

(2) ~~[Provided, however, that]~~ The appeals officer may order the appeal remanded to the residency review committee for further proceedings before the appeals officer renders a final determination if the appeals officer determines that ~~[the residency review committee]:~~

(a) The residency review committee failed to consider all information and evidence submitted; or

(b) The residency review committee failed to follow institutional policies and procedures; or

(c) The information provided by an institution does not support a determination of residency status.

(3)(a) New information provided by the student that was not available to the institution at the time of the institution's determination of residency status shall result in a decision by the appeals officer to remand the case to the residency review committee for further action.

(b) A remand by the appeals officer ~~[because of information not available at the time of the determination of residency status]~~ shall require the residency review committee to reconsider the determination of residency status in light of the new information.

(c) An institution shall notify a student in writing of additional information required and shall establish a deadline for the receipt of that information.

(d) The residency review committee shall consider the new information or evidence and shall forward a written recommendation to the appeals officer within twenty-one (21) calendar days after receipt of the notice of remand.

(e) ~~[(d)]~~ A copy of the residency review committee recommendation shall be provided to the student.

(f) ~~[(e)]~~ A remand shall be part of the appeal to the Council on Postsecondary Education and shall not constitute a determination by the appeals officer.

(4) The determination of the appeals officer shall be in writing and shall state the reason for the decision.

(5)(a) Except as provided in paragraph (b) of this subsection, within twenty-one (21) calendar days after receipt of the student's file, the recommendation of the appeals officer shall be forwarded to the student by certified or registered mail with a copy to the office or person

designated by the institution to administer this administrative regulation.

(b) If the appeals officer remands an appeal under subsection (2) of this section, the twenty-one (21) days shall not include the time the order was made until the time the residency review committee's written recommendation was received by the appeals officer.

(6) The student shall have ten (10) calendar days after receipt of the appeals officer's recommendation to file a written appeal by registered or certified mail with the Council on Postsecondary Education requesting a formal adjudicatory hearing pursuant to KRS Chapter 13B and 13 KAR 2:070.

Section 18. Administrative Hearing to be Held if Requested by Student. (1) An administrative hearing on a request for a change in a determination shall be held in accordance with the provisions of KRS Chapter 13B and 13 KAR 2:070.

(2) The recommended order shall be received by the President of the Council on Postsecondary Education who shall issue a final decision on the appeal.

(a) The decision of the president shall be in writing and in accordance with KRS 13B.120.

(b) The decision of the president shall be provided to the student and the institution within twenty-one (21) calendar days after receipt of the hearing officer's decision.

(3) Upon receipt of the notification of the final decision of the president, the student shall have the right to appeal the decision to the appropriate court in accordance with KRS 13B.140.

Section 19. Charges to Institutions for Administrative Hearings. The Council on Postsecondary Education, upon receipt of a bill for the conduct of an administrative hearing on an appeal of a determination of residency status, shall assign one-half (1/2) of the cost of the administrative hearing to the institution from which the appeal is taken. An [The] institution shall provide payment to the Council on Postsecondary Education or to the office or administrative entity so designated by the Council on Postsecondary Education within thirty (30) calendar days of receipt of the notice of payment.

J. KENNETH WALKER, Acting Chief Operating Officer
DENNIS L. TAULBEE, General Counsel

APPROVED BY AGENCY: May 8, 1998
FILED WITH LRC: May 8, 1998 at noon

**GENERAL GOVERNMENT CABINET
Kentucky Board of Dentistry
(As Amended at ARRS, June 9, 1998)**

201 KAR 8:400. Complaint procedure.

RELATES TO: KRS 313.022 [313-150]

STATUTORY AUTHORITY: KRS 313.220(4)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 313.220(4) authorizes the board to regulate the practice of dentistry and the use of dental auxiliary personnel. KRS 313.022 authorizes the board to institute and maintain actions to restrain and enjoin the unlicensed practice of dentistry. This administrative regulation is necessary to establish the procedure for filing a complaint for the unlicensed practice of dentistry and the action to be taken by the board on a complaint. [This administrative regulation establishes procedures for filing complaints against persons subject to administrative regulation by the Kentucky Board of Dentistry.]

Section 1. Definitions. (1) "Board" is defined in KRS 313.010(1) and 313.220.

(2) "Formal complaint" means a formal administrative pleading authorized by the board that sets forth a charge against a licensee, certificate holder or applicant and commences a formal disciplinary proceeding under KRS Chapter 13B.

(3) "Law enforcement committee" means a committee that:

(a) Reviews an initiating complaint; and

(b) Determines whether an investigation should be conducted;

VOLUME 25, NUMBER 1 – JULY 1, 1998

~~(c) Appoints one (1) of its members to conduct the investigation;~~
and

~~(d) May be assisted by:~~

~~1. The board's staff;~~

~~2. A board agent; or~~

~~3. The office of the Attorney General.~~

~~(4) "Initiating complaint" means any allegation of:~~

~~(a) A violation by a:~~

~~1. Licensee;~~

~~2. Certificate holder; or~~

~~3. Applicant; or~~

~~(b) An unlicensed person:~~

~~1. Engaging in the practice of dentistry; or~~

~~2. Using the title of dentist, dental hygienist, or specialist.~~

~~(5) "Order" means the final disposition of a hearing.~~

~~(6) "Person" means a(n):~~

~~(a) Individual;~~

~~(b) Partnership;~~

~~(c) Corporation;~~

~~(d) Association;~~

~~(e) Public organization; or~~

~~(f) Private organization.~~

~~(7) "Presiding officer" means:~~

~~(a) The person appointed by the board to preside at a hearing, pursuant to KRS 313.150(1) and (2); and~~

~~(b) A hearing officer or member of the hearing panel.~~

~~(8) "Respondent" means the person against whom an initiating or a formal complaint has been made.~~

Section 2. Initiating Complaint. (1) A complaint may be initiated by:

(a) The board;

(b) A member of the public; or

(c) A state agency.

(2) An initiating complaint shall:

(a) Be in writing, unless the nature of the complaint alleges an immediate danger to the health, safety, and welfare of the public;

(b) Bear the date of the complaint; and

(c) Bear the signature of the person making the complaint.

(3) A certified copy of a court record for conviction of a misdemeanor or felony shall be considered a valid initiating complaint.

(4) An initiating complaint may be received by:

(a) A board member;

(b) The Office of the Attorney General; or

(c) A staff member.

Section 3. Consideration of Initiating Complaint. (1) Review of an initiating complaint shall take place:

(a) At the next regularly scheduled meeting of the law enforcement committee; or

(b) As soon as practicable.

(2) The law enforcement committee:

(a) Shall:

1. [(a)] Review the initiating complaint;

2. [(b)] Determine if an investigation is warranted; and

3. [(c)] If it is determined that an investigation is warranted, appoint one (1) of its members or an agent or representative of the board to conduct an investigation of the respondent.

(b) May be assisted by:

1. Board staff;

2. A board agent; or

3. The Office of the Attorney General.

(3) Based on consideration of the initiating complaint and the investigative report, the board shall determine if there has been a prima facie violation. The members of the law enforcement committee shall not vote on this determination.

(4) If it is determined that the facts alleged constitute a prima facie violation, the board:

(a) Shall issue a formal complaint, in accordance with KRS Chapter 13B, against the:

1. Licensee;

2. Certificate holder; or

3. Applicant; and

(b) May order that a written response be filed with the board, or if it is determined that there is a prima facie violation of KRS 313.020, shall proceed under KRS 313.022.

Section 4. Procedures for Disciplinary Hearings. (1) All procedures for disciplinary hearings shall conform to KRS Chapter 13B, unless otherwise noted in this administrative regulation.

(2) Testimony to be considered by the board, hearing panel, or hearing officer, if any, may be taken by deposition. A party or witness may be allowed to testify by deposition, rather than attend the hearing, upon a showing of inability to attend and a showing that other parties shall have an opportunity to cross-examine at said deposition. The presiding officer or hearing officer, if any, shall rule upon motions to allow testimony to be considered by deposition. [No] Other depositions shall not be allowed.

(3) The presiding officer or hearing officer, if any, may order that at least five (5) days prior to the hearing, each party shall file a list of witnesses expected to testify in the hearing, including mailing address, telephone number, and a summary of expected testimony.

Section 5. Final Disposition. (1) Upon reaching a decision, the board shall notify, in writing by certified mail, the complainant and respondent of its final disposition of the matter.

(2) The board shall make public:

(a) Its final order in a disciplinary action under KRS 313.130, 313.140, and 313.330; and

(b) An action to restrain or enjoin the unlicensed practice of dentistry.

~~[Section 1. Unless exceptional circumstances otherwise require, all complaints shall be in writing and shall bear the date and signature of the person making the complaint.~~

~~Section 2. Unless exceptional circumstances otherwise require, before a complaint is investigated it shall present evidence of a specific violation of law.~~

~~Section 3. Complaints may be received by any board member, dentist or hygienist designated by the board, the board's counsel, or by any board staff member.~~

~~Section 4. If the complaint warrants a formal hearing, the board shall provide the respondent with:~~

~~(1) A formal written presentation of charges;~~

~~(2) A notice of the right to be represented by counsel;~~

~~(3) At least ten (10) days to prepare any defense;~~

~~(4) The right to answer charges;~~

~~(5) The right to subpoena witnesses in his or her behalf; and~~

~~(6) The notice of the right to appeal after an adjudication against the respondent.~~

~~Section 5. Any board member who has participated in the preliminary investigations shall not participate in the hearing process.~~

~~Section 6. All subpoenas shall be issued in the name of the board and shall be signed by the secretary-treasurer of the board. The person requesting the subpoena shall bear the cost of serving the subpoena, paying the witness fees, and expenses. The board shall bear the cost of witnesses subpoenaed in the board's behalf.~~

~~Section 7. The board shall notify the person making the complaint and the person against whom the complaint was made of the final disposition of the matter.]~~

PATRICIA G. HOWELL, RDH, President

MARK BRENGELMAN, Assistant Attorney General

APPROVED BY AGENCY: April 9, 1998

FILED WITH LRC: April 9, 1998 at 4 p.m.

VOLUME 25, NUMBER 1 – JULY 1, 1998

GENERAL GOVERNMENT CABINET
Kentucky Real Estate Commission
(As Amended at ARRS, June 9, 1998)

201 KAR 11:147. Procedure for license retention when sales associate released by broker.

RELATES TO: KRS 324.160(1)(g), 324.310, 324.330

STATUTORY AUTHORITY: KRS 324.281(5), 324.282 [Chapter 13A]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 324.282 authorizes the commission to promulgate administrative regulations necessary to implement KRS Chapter 324. KRS 324.310(1) requires the delivery of a sales associate's license to the commission when an association with a principal broker is terminated. This administrative regulation establishes the procedure and requirements that follow the delivery of a sales associate's license to the commission when an association with a principal broker is terminated. [The function of this administrative regulation is to expand KRS 324.310 and 324.330 to avoid misinterpretations of administrative procedures.]

Section 1. (1) Upon receipt, by regular mail, of a letter from the principal [responsible] broker releasing a sales associate pursuant to KRS 324.310(1) [salesperson], the commission shall notify the sales associate [salesperson] by regular mail at his last resident address on file at the commission office that, within thirty (30) days of the date of the release letter, he shall:

- (a) Reaffiliate with another broker; or
- (b) Request by letter that his license be placed in escrow.

(2) Failure by the sales associate to comply with the order issued by the commission pursuant to subsection (1) of this section shall:

- (a) Be a violation of KRS 324.160(1)(g); and
- (b) Result in the suspension or revocation of his license.

[Failure to comply will result in cancellation of license [and retaking the regular examination in order to become reinstated].]

ROBERT D. MASSEY, Chairman
JEFFREY C. BLAIR, General Counsel

APPROVED BY AGENCY: April 14, 1998
FILED WITH LRC: April 15, 1998 at 10 a.m.

GENERAL GOVERNMENT CABINET
Kentucky Real Estate Commission
(As Amended at ARRS, June 9, 1998)

201 KAR 11:175. Instructor approval procedures and guidelines.

RELATES TO: KRS 324.010(1)(g), 324.046(1), (2) [(f)]

STATUTORY AUTHORITY: KRS 324.281(5), 324.282

NECESSITY, FUNCTION, AND CONFORMITY: KRS 324.282 authorizes the commission to promulgate administrative regulations necessary to implement KRS Chapter 324. KRS 324.010(1)(g) authorizes the commission to approve a real estate school. KRS 324.046(1) and (2) require an applicant for initial licensure as a broker or sales associate to have completed the specified number of courses from an approved or accredited real estate school. This administrative regulation establishes the requirements and application procedures for approval as an instructor at an approved real estate school. [To inform and set certain standards for the licensees and to protect the public.]

Section 1. To apply for certification as an instructor at an approved real estate school, an instructor shall:

- (1) Submit a:
 - (a) Completed Real Estate Instructor Application;
 - (b) Copy of a current resume;
 - (c) Copy of legal documentation required to support an answer, if applicable; and

(d) Completed course outline for each course;

(2) [In order to be approved by the commission, an instructor shall submit an application on forms available from the commission and shall] Have:

(a) [(1)] A bachelor's, masters or doctorate degree from a college or university duly accredited by a nationally recognized rating or accrediting organization, in a field directly [reasonably] related to the nature of the course, such as real estate, business, law, finance, or education;

(b) [(2)] An associate degree in real estate from a college or university duly accredited by a nationally recognized rating or accrediting organization[- in real estate];

(c) [(3)] Completed five (5) consecutive years full-time experience in the real estate related subject area that he is teaching (averaging at least twenty (20) hours per week for each of the five (5) years); or

(d) A combination of teaching, education, [(4)] [A valid current teachers certificate authorizing the holder to teach in the field of real estate;

(5)] Any combination of teaching in secondary education] and full-time experience in real estate totaling five (5) years (averaging at least twenty (20) hours per week for each year of experience); and

[(6)] The forms required in this section are incorporated by reference, and may be reviewed or obtained at the Real Estate Commission, 10200 Linn Station Road, Suite 201, Louisville, Kentucky 40223, Monday through Friday from 8 a.m. to 4:30 p.m.]

(3) Possess:

(a) A thorough familiarity of the provisions of KRS Chapter 324 and the effect of those provisions on the subject area of the course; and

(b) A thorough knowledge of the subject area of the course he is teaching.

[(5)] Candidates for instructor approval must possess a thorough familiarity of the provisions of the Kentucky Real Estate License Law and how those laws affect the subject area the instructor will be teaching. Each instructor must also possess a thorough knowledge of the subject area which he shall be teaching.]

Section 2. Approval of an instructor shall [may] be withdrawn by the commission for:

(1) A violation of a [any] provision of KRS Chapter 324 or an administrative regulation promulgated under it;

(2) Falsification of material submitted to the commission to become an approved instructor;

(3) Failure to provide to the commission requested material;

(4) While acting as an instructor in an educational facility, engaging in brokerage activity with an enrolled student [any of the enrolled students];

(5) Soliciting an investment [investments] from a student; or

(6) Attempting to recruit a [any] student to a real estate company while acting as an instructor.

Section 3. (1) [Only] An approved instructor shall teach:

(a) A prelicensure course [(1)] Prelicensure courses] offered by an:

1. [(a)] Approved real estate school; or

2. [(b)] Accredited real estate school which receives [any] funding under the real estate education, research and recovery fund; or [and]

(b) A [(2)] mandatory continuing education course. [courses;]

(2) A person who is not an approved instructor shall not teach a course listed in subsection (1) of this section.

Section 4. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Real Estate Instructor Application", 11/97 edition, Kentucky Real Estate Commission; and

(b) "Course Outline", 11/97 edition, Kentucky Real Estate Commission.

(2) This material may be inspected, copied, or obtained at the Kentucky Real Estate Commission, 10200 Linn Station Road, Suite 201, Louisville, Kentucky 40223, Monday through Friday, 8 a.m. to 4:30 p.m.

ROBERT D. MASSEY, Chairman
JEFFREY C. BLAIR, General Counsel

VOLUME 25, NUMBER 1 – JULY 1, 1998

APPROVED BY AGENCY: April 14, 1998
FILED WITH LRC: April 15, 1998 at 10 a.m.

GENERAL GOVERNMENT CABINET Kentucky Real Estate Commission (As Amended at ARRS, June 9, 1998)

201 KAR 11:350. Seller's disclosure of conditions form.

RELATES TO: KRS 324.360 [Chapter 324]

STATUTORY AUTHORITY: KRS 324.360

NECESSITY, FUNCTION, AND CONFORMITY: KRS 324.360 requires the Kentucky Real Estate Commission to promulgate an administrative regulation authorizing a "seller's disclosure of conditions form" and sets forth matters which the form shall contain and allows the inclusion of additional matters. This administrative regulation establishes the required "Seller Disclosure of Property Condition" form required by KRS 324.360.

Section 1. The "Seller Disclosure of Property Condition" form established in Section 2 of this administrative regulation shall be completed and signed as required by KRS 324.360 by a seller of residential real estate.

Section 2. The "Seller Disclosure of Property Condition" form shall be in the following format: [The following form shall be completed and signed as provided in KRS 324.360, by sellers of residential real estate when licensed agents are involved:

Section 1. The form shall be as follows:]

"SELLER DISCLOSURE OF PROPERTY CONDITION"

The information in this form is only for the period the undersigned owned the property beginning (date of purchase) to (date of this form). This form applies to sales and purchases of residential real estate. This form is not required for:

1. Residential purchases of new homes if a written warranty is offered;
2. Sales of real estate at auction; or [or]
3. A court supervised foreclosure.

PROPERTY ADDRESS:

PURPOSE OF STATEMENT: Completion of this form shall satisfy the requirements of KRS 324.360 [Chapter 324 of the Kentucky Revised Statutes] which mandates the seller's disclosure of [the condition of] [and] information about the property he is about to sell. This disclosure is based solely on the seller's observation and knowledge of the property's condition and the improvements thereon. This statement shall not be a warranty [of any kind] by the seller or seller's agent and shall not be intended as a substitute for an [any] inspection or warranty the purchaser may wish to obtain.

INSTRUCTIONS TO THE SELLER: (1) Complete all numbered items. (2) Report all known conditions affecting the property. (3) Attach additional pages with your signature if necessary. (4) Complete this form yourself. (5) If some items do not apply to your property, write "not applicable". (6) If you do not know the answer to a question, write "unknown".

SELLER'S DISCLOSURE: As seller, I/we disclose the following information regarding the property. [and that] This information is true and accurate to the best of my/our knowledge as of the date signed. Seller authorizes the agent to provide a copy of this statement to a [any] person or entity in connection with actual or anticipated sale of the property or as otherwise provided by law. The following [are representations made by seller and] are not the representations of the agent. [The agent has no independent knowledge of the condition of the property except that which is set out on this form:]

Please answer all questions. If the answer is yes, please explain. If additional space is needed, use the reverse side or make attachments.

1. HOUSE SYSTEMS YES NO UNKNOWN

Any past or current problems affecting:

- | | | | |
|-----------------------------------|---|---|---|
| (a) Plumbing | — | — | — |
| (b) Electrical system | — | — | — |
| (c) Appliances | — | — | — |
| (d) Floors and wall | — | — | — |
| (e) Doors and windows | — | — | — |
| (f) Ceiling and attic fans | — | — | — |
| (g) Security system | — | — | — |
| (h) Sump pump | — | — | — |
| (i) Chimneys, fireplaces, inserts | — | — | — |
| (j) Pool, hot tubs, sauna | — | — | — |
| (k) Sprinkler system | — | — | — |
| (l) Heating: age | — | — | — |
| (m) Cooling/air conditioning: age | — | — | — |
| Explain: | | | |

2. FOUNDATION/STRUCTURE/BASEMENT

- | | | | |
|--|---|---|---|
| (a) Any defects or problems, current or past, to the foundation or slab? | — | — | — |
| (b) Any defects or problems, current or past, to the structure or exterior veneer? | — | — | — |
| Explain: | | | |
| (c) Has the basement leaked at any time since you have owned or lived in the property? | — | — | — |
| (d) When was the last time the basement leaked? | — | — | — |
| (e) Have you ever had any repairs done to the basement? | — | — | — |
| (f) If you have had repairs done to the basement relative to leaking, when was the repair performed? | — | — | — |
| Explain: | | | |
| (g) If the basement presently leaks, how often does it leak? (e.g., every time it rains, only after an extremely heavy rain, etc.) | — | — | — |

3. ROOF

- | | | | |
|--|---|---|---|
| (a) Age of the roof? | — | — | — |
| (b)1. Has the roof leaked at any time since you have owned or lived in the property? | — | — | — |
| 2. When was the last time the roof leaked? | — | — | — |
| (c)1. Have you ever had any repairs done to the roof? | — | — | — |
| 2. If you have ever had the roof repaired, when was the repair performed? | — | — | — |
| (d)1. Have you ever had the roof replaced? | — | — | — |
| 2. If you have had the roof replaced, when was the replacement performed? | — | — | — |
| (e) If the roof presently leaks, how often does it leak? (e.g., every time it rains, only after an extremely heavy rain, etc.) | — | — | — |

4. LAND/DRAINAGE

- | | | | |
|----------------------------------|---|---|---|
| (a) Any soil stability problems? | — | — | — |
| (b) Has the property ever | — | — | — |

VOLUME 25, NUMBER 1 – JULY 1, 1998

had a drainage, flooding, or grading problem? — — —
 (c) Is the property in a flood plain zone? — — —
 (d) Is there a retention/detention basin, pond, lake, creek, spring, or water shed on or adjoining this property? — — —
 Explain: — — —

5. BOUNDARIES

(a) Have you ever had a staked or pinned survey of the property? — — —
 (b) Do you know the boundaries? — — —
 (c) Are the boundaries marked in any way? — — —
 (d) Are there any encroachments or unrecorded easements relating to the property of which you are aware? — — —
 Explain: — — —

6. WATER

(a) 1. Source of water supply
 2. Are you aware of below normal water supply or water pressure? — — —
 (b) Is there a water purification system or softener remaining with the house? — — —
 (c) Has your water ever been tested? If yes, give results — — —
 Explain: — — —

7. SEWER SYSTEM

(a) Property is serviced by:
 — public sewer;
 — private sewer;
 — septic tank;
 — storm sewer;
 — leach field;
 — aeration tank;
 — filtration bed;
 — unknown
 (b) If not a public or private sewer:
 Date of last inspection:
 Date last cleaned:
 (c) Are you aware of any problems with the sewer system? — — —
 Explain: — — —

8. CONSTRUCTION/REMODELING

(a) Have there been any additions, structural modifications, or other alterations made? — — —
 (b) Were all necessary permits and government approvals obtained? — — —
 Explain: — — —

9. HOMEOWNER'S ASSOCIATION

(a) 1. Is the property subject to rules or regulations of a [any] homeowner's association? — — —

2. If yes, what is the yearly assessment? \$
 (b) Are you aware of any condition which may result in an increase in taxes or assessments? — — —
 (c) Are any features of the property shared in common with adjoining landowners, such as walls, fences, driveways, etc.? — — —
 Explain: — — —

10. MISCELLANEOUS

(a) Was this house built before 1978? — — —
 (b) Are you aware of any use of ureaformaldehyde, asbestos materials, or lead-based paint in or on this home? — — —
 (c) 1. Are you aware of any testing for radon gas?
 2. Results, if tested:
 (d) Are you aware of any underground storage tanks, old septic tanks, field lines, or abandoned wells on the property? — — —
 (e) Are you aware of any present or past wood infestation (i.e., termites, bores, carpenter ants, fungi, etc.)? — — —
 (f) Are you aware of any damage due to wood infestation? — — —
 (g) 1. Have the house [and/or] other improvements ever been treated for wood infestation?
 2. If yes, when, by whom, and any warranties?
 (h) Are you aware of any existing or threatened legal action affecting this property? — — —
 (i) Are there any assessments other than property assessments that apply to this property (i.e., sewer assessments)? — — —
 (j) Are you aware of any violations of local, state, or federal laws, codes, or ordinances relating to this property? — — —
 (k) Are you aware of any other conditions which are defective with regard to this property? — — —
 (l) Are there any environmental hazards known to seller? — — —
 (m) Are there any warranties to be passed on? — — —
 SPACE FOR ADDITIONAL INFORMATION:

[PROPERTY CONDITIONS, IMPROVEMENTS AND ADDITIONAL INFORMATION:

4. Does the basement leak? — Yes — No — Unknown

- If yes, when? _____ If yes, has the leak been repaired or treated? Yes No Unknown
2. Does the roof leak? Yes No Unknown
If yes, when? _____ If yes, has the leak been repaired? Yes No Unknown
What is the condition of the roof? Explain: _____
3. What is the source of the water supply? _____
Has the water been tested? Yes No Unknown
If yes, will you provide a copy of the test results? Yes No
4. Have you ever found the water supply to be inadequate? Yes No If yes, explain: _____
5. What is the source of the property's sewage service? Municipal or other sewer system Septic tank/septic system Other
6. What is the condition of your sewer? Explain: _____
7. Has your sewage system been repaired or treated? Yes No If yes, approximate date of repair: _____
8. Plumbing system: Are you aware of any leaks in your plumbing system? Yes No Unknown If yes, describe the location and problem: _____
9. Electrical System: Is the electrical system more than twenty years old? Yes No Unknown
10. Have you found it necessary to have any portion of your electrical system repaired by an electrician or other professional? Yes No Unknown
11. Heating System: Type/approximate age _____
12. Cooling System: Type/approximate age _____
13. Have you had your heating or cooling system repaired or had maintenance work performed on your heating or cooling system? Yes No Unknown If yes, the approximate date of the repair or maintenance: _____

The seller has owned this [the] property since _____ (date) and makes these representations only since that date. Seller agrees to immediately notify buyer of any changes which may become known to seller prior to closing. [and only prior to the date this form is completed. If any changes occur in the structure or mechanical or component system of this property from the date of this form to the date of closing, seller will immediately disclose the changed circumstances to the buyer. In no event shall the parties hold the broker liable for any representations not directly made by the broker or the broker's agent.]

Seller	Date	Seller	Date
[Buyer	Date	Buyer	Date]

THE SELLER REFUSES TO COMPLETE THIS FORM AND ACKNOWLEDGES [HIS UNDERSTANDING] THAT THE AGENT SHALL SO INFORM THE BUYER.

Seller:
Date:

THE SELLER HAS REFUSED TO COMPLETE THE FORM AND HAS REFUSED TO ACKNOWLEDGE HIS FAILURE TO COMPLETE THE FORM.

Broker/Agent:
Date:

THE BUYER ACKNOWLEDGES RECEIPT OF THIS FORM.

Buyer	Date	Buyer	Date
-------	------	-------	------

THE SELLER MAY DISCLOSE ADDITIONAL INFORMATION NOT REQUESTED OF THIS FORM AND MAY RESPOND TO ADDITIONAL INQUIRIES OF THE BUYER."

ROBERT D. MASSEY, Chairman
JEFFREY C. BLAIR, General Counsel
APPROVED BY AGENCY: April 14, 1998
FILED WITH LRC: April 15, 1998 at 10 a.m.

GENERAL GOVERNMENT CABINET
Kentucky Board of Nursing
(As Amended at ARRS, June 9, 1998)

201 KAR 20:056. Advanced registered nurse practitioner registration, program requirements, recognition of a national certifying organization.

RELATES TO: KRS 314.011(8) [(6)], 314.042, 314.091, 314.161
STATUTORY AUTHORITY: KRS 314.042(7), 314.131(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.042 requires [Chapter 314 provides for] the registration of advanced registered nurse practitioner. This administrative regulation establishes the requirements for registration, renewal, and reinstatement; programs, and recognition of a national certifying organization. [It is necessary to assure that applicants meet qualifications as set forth by the board as necessary for safe practice.]

Section 1. An applicant for registration as an advanced registered nurse practitioner in Kentucky shall:

(1) Complete an "Application for Registration as an Advanced Registered Nurse Practitioner in Kentucky"; and

(2) Comply with the requirements established in KRS 314.042 and this administrative regulation. [The application for registration as an advanced registered nurse practitioner in Kentucky (June 1993) required by the board is hereby incorporated by reference. A copy of the form may be obtained, inspected or copied at the Board of Nursing office, 312 Whittington Parkway, Suite 300430, Louisville, Kentucky during regular business hours.]

Section 2. Postbasic Program of Study and Clinical Experience. An organized postbasic program of study and clinical experience shall conform to the following criteria in order to be acceptable to the board:

(1) Be an established, ongoing and organized program offered on a routine basis to an enrollee; [enrollees:]

(2)(a) Except as provided in paragraph (b) of this subsection, be accredited or approved for the education of nurses by a recognized accreditation or approval body; or

(b) [-or] The sponsoring organization shall hold [holds] such accreditation or approval for the education of nurses by a recognized accreditation or approval body;

(3) Have a program design which prepares an enrollee [enrollees] to function in a role consistent with the advanced registered nursing practice specialty designation;

(4) Have a program design which includes purpose, philosophy, objectives, curriculum content, and plan to evaluate achievement of objectives and measurement of learning outcomes of students;

(5) Have a designated faculty responsible for planning, development, implementation, and evaluation of curriculum and students;

(6) Include didactic components;

(7) Include a supervised clinical experience;

(8) Upon successful completion, award a diploma or certificate; and

(9)(a) Except as provided in paragraph (b) of this subsection, extend over an enrollment period of not less than nine (9) months.

(b) An organized postbasic program of study and clinical experience with an enrollment period of less than nine (9) months shall be evaluated by the board on an individual basis to determine if the program is acceptable to the board by sufficiently preparing a student [students] for advanced registered nursing practice.

Section 3. National Certifying Organizations. (1) A nationally established organization or agency which certifies registered nurses for advanced nursing practice shall be recognized by the board if it meets the following criteria:

(a) The certifying body is an established national nursing organization or a subdivision thereof;

(b) [Full membership privileges are restricted to registered nurses;

(c) Eligibility requirements for certification are delineated;

(c) [(d)] Certification is offered in specialty areas of clinical practice;

(d) [(e)] Scope and standards of practice statements are promulgated; and

(e) ~~{f}~~ Mechanism for determining continuing competency is established.

(2) The board shall maintain a list of recognized national certifying organizations ~~[which is hereby incorporated by reference. A copy of the list may be obtained at the Board of Nursing office, 312 Whittington Parkway, Suite 300, Louisville, Kentucky during regular business hours].~~

Section 4. Practice Pending Registration. (1) An applicant who meets all the requirements for practice as an advanced registered nurse practitioner except for certification by a national certifying organization shall ~~[may]~~ be authorized to practice as an advanced registered nurse practitioner subject to the following conditions:

(a) The applicant shall apply for certification from a recognized national certifying organization for the first time.

(b) The applicant shall obtain an advanced registered nurse practitioner of the same specialty, or a licensed physician, to supervise the applicant. For the purposes of this paragraph:

1. ~~[section:]~~ Supervision shall include, at a minimum, periodic observation and evaluation of the applicant's practice to validate that the practice has been performed according to established standards; and

2. The supervisor shall be immediately available either on site or by telephone.

(c) The applicant shall verify to the board that he has applied for certification and has obtained a supervisor.

(d) Practice pursuant to this subsection ~~[provision]~~ shall extend ~~[only]~~ until the applicant has learned the results of the request for certification.

(e) An applicant who has ~~[Applicants who have]~~ previously applied for and been denied certification by a recognized national certifying organization shall be ineligible to practice as an advanced registered nurse practitioner until he has ~~[they have]~~ been certified.

(2) A registered nurse who meets all the requirements for practice as an advanced registered nurse practitioner and who holds a registered nurse temporary work permit issued pursuant to 201 KAR 20:090 pending licensure by endorsement shall be authorized to practice as an advanced registered nurse practitioner for a period of time not to exceed the expiration date of the temporary work permit.

(3) Authorization to practice pursuant to subsections (1) or (2) of this section shall be in the form of a letter from the board acknowledging that the applicant has met all the requirements of this section. An applicant shall not practice until the authorization letter has been issued.

(4) An individual authorized to practice pursuant to subsection (1) of this section may use the title "ARNP Applicant" or "ARNP App."

Section 5. Registration Renewal. (1) The advanced registered nurse practitioner registration shall expire or lapse at the time the registered nurse license expires or lapses.

(2) To be eligible for renewal of registration as an advanced registered nurse practitioner, the applicant shall:

(a) Renew the registered nurse license on an active status;

(b) Submit a completed "ARNP Registration Renewal Application" form ~~[application form for renewal of registration as an advanced registered nurse practitioner];~~

(c) Submit the current renewal application fee, as established in 201 KAR 20:240, Section 1(2)(k); and

(d) Maintain current certification by a recognized national certifying organization.

(3) An advanced registered nurse practitioner who fails to renew the registered nurse license or is issued a license on an inactive status shall ~~[may]~~ not practice as or use the title of advanced registered nurse practitioner until:

(a) A current active license has been issued by the board; and

(b) The advanced registered nurse practitioner registration has been reinstated.

Section 6. Registration Reinstatement. (1) If a nurse fails to renew the advanced registered nurse practitioner registration as prescribed by applicable law and administrative regulation, the registration shall lapse on the last day of the licensure period.

(2) To be eligible for reinstatement of advanced registered nurse practitioner registration, the applicant shall:

(a) Submit a completed "Reinstatement Application for Registration as an Advanced Registered Nurse Practitioner" ~~[application]~~ form;

(b) Submit the current reinstatement application fee, as established in 201 KAR 20:240, Section 1(2)(l); and

(c) Maintain current certification by a recognized national certifying organization.

Section 7. Certification or Recertification. (1) An advanced registered nurse practitioner who has met the requirements and has applied for current, active recertification by one (1) of the national organizations recognized in Section 3 of this administrative regulation may practice as an advanced registered nurse practitioner until the results of the recertification have been received.

(2) A nurse who fails to attain current, active certification or recertification from one (1) of the national organizations recognized in Section 3 of this administrative regulation shall not:

(a) Be registered as an advanced registered nurse practitioner; and

(b) ~~[may not]~~ Practice or use the title of advanced registered nurse practitioner until the requirements of this administrative regulation have been met.

(3) An advanced registered nurse practitioner who is decertified by the appropriate national organization shall:

(a) Notify the board of that fact; and

(b) ~~[shall]~~ Not practice as or use the title of advanced registered nurse practitioner during the period of decertification.

Section 8. (1) An application shall be ~~[is]~~ valid for a period of one (1) year from date of submission to board.

(2) After one (1) year from the date of application, the applicant shall be required to reapply.

Section 9. The requirements of this administrative regulation shall not prohibit the supervised practice of a nurse ~~[nurses]~~ enrolled in:

(1) A postbasic educational program ~~[programs]~~ for preparation for ~~[in]~~ advanced registered nursing practice; or

(2) An ~~[enrolled-in]~~ advanced registered nurse practitioner refresher course ~~[courses]~~.

Section 10. A ~~[Any]~~ registered nurse who holds himself out as a clinical specialist or is known as a clinical specialist ~~[such]~~, shall be required to register as an advanced registered nurse practitioner if his practice includes the performance of advanced registered nursing procedures.

Section 11. A ~~[Any]~~ nurse practicing as an advanced registered nurse practitioner who is not registered as an advanced registered nurse practitioner ~~[such]~~ by the board, an ~~[any]~~ advanced registered nurse practitioner whose practice is inconsistent with the specialty to which he has been designated, or an ~~[any]~~ advanced registered nurse practitioner who does not recertify and continues to practice as an advanced registered nurse practitioner shall be subject to the disciplinary procedures set in KRS 314.091.

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

(a) "Application for Registration as an Advanced Registered Nurse Practitioner in Kentucky", 6/93, Kentucky Board of Nursing;

(b) "ARNP Registration Renewal Application", 3/98, Kentucky Board of Nursing;

(c) "Reinstatement Application for Registration as an Advanced Registered Nurse Practitioner", 3/98, Kentucky Board of Nursing; and

(d) "Approved ARNP Certification Organizations", May 1994, Kentucky Board of Nursing.

(2) This material may be inspected, copied, or obtained at the Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, Monday through Friday, 8 a.m. through 4:30 p.m.

MARCIA STANHOPE, President
NATHAN GOLDMAN, General Counsel
APPROVED BY AGENCY: February 12, 1998
FILED WITH LRC: April 9, 1998 at 11 a.m.

TOURISM CABINET
Department of Fish and Wildlife Resources
(As Amended at ARRS, June 9, 1998)

301 KAR 3:010. Public use of wildlife management areas.
[Depredation of wildlife areas:]

RELATES TO: KRS [150.010;] 150.025, [150.300, 150.460;]
150.620, 150.640

STATUTORY AUTHORITY: KRS [19A.350;] 150.025

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) authorizes the department to promulgate administrative regulations necessary to carry out the purposes of KRS Chapter 150; KRS 150.620 permits the department to impose and enforce special administrative regulations on lands acquired for public hunting, fishing, and related recreational uses. This administrative regulation prohibits certain actions not in keeping with the intended purpose of wildlife management areas, sets requirements on other uses and stipulates the procedure for obtaining group use permits on these areas. [This administrative regulation is necessary to protect from any acts of depredation lands and waters owned or controlled by the Department of Fish and Wildlife Resources as fishing waters, wildlife management areas, fish hatcheries and refuges. The function of this administrative regulation is to contribute to the protection, maintenance and development of these lands and waters and their associated wildlife through regulated and prudent use by the public.]

Section 1. Definitions. (1) "Event" means:

- (a) An activity conducted by a group;
- (b) A commercial activity; or
- (c) A field trial.

(2) "Field trial" means an event where unleashed dogs are worked and judged.

(3) "Group" means:

- (a) A club, society or association;
- (b) Ten (10) or more persons who gather to conduct an event; or
- (c) A field trial.

(4) "Horse" means a horse, pony, mule, donkey, llama or similar beast of burden.

(5) "Injurious substance" means a substance which may be injurious to aquatic life, wildlife or wildlife habitat.

(6) "Mechanized vehicle" means a motor vehicle, bicycle or other human conveyance except a wheelchair.

(7) "Motor vehicle" means a motor-driven conveyance, whether or not licensed for use on a public highway.

(8) "Ride" means to ride, drive or lead a horse.

(9) "Wildlife management area" or "WMA" means a tract of land:

- (a) Controlled by the department through ownership, lease, license or cooperative agreement; and
- (b) Having "wildlife management area" or "WMA" as part of its official name.

[(10) "WMA" means a wildlife management area.]

Section 2. While upon a WMA, a person:

(1) Shall observe the hunting dates, limits and other requirements that apply to the county in which the WMA is located, unless specific requirements are stipulated in:

- (a) This administrative regulation;
- (b) 301 KAR 2:049;
- (c) 301 KAR 2:178;
- (d) 301 KAR 2:140;
- (e) 301 KAR 2:142;
- (f) 301 KAR 2:144;
- (g) 301 KAR 2:222; or
- (h) 301 KAR 2:225.

(2) Shall wear hunter orange garments as stipulated in 301 KAR 2:172 when deer hunting with firearms is allowed.

(3) When deer hunting with breech-loading firearms is allowed, shall not:

- (a) Hunt small game or furbearers;
- (b) Trap; or
- (c) Allow unleashed dogs.

(4) May hunt small game, furbearers, or turkey by archery during the modern gun deer season if gun deer hunting is not permitted on that WMA during the modern gun deer season.

(5) Unless specified otherwise in 301 KAR 2:049, shall not allow an unleashed dog from March 1 until the third Saturday in August, except when participating in:

- (a) A department-authorized field trial;
- (b) The spring squirrel season; or
- (c) Training a retriever or other water dog, if [provided that]:

- 1. The activity is authorized by a sign at the body of water; and
- 2. The dog remains leashed except while actively training in or within 100 feet of the body of water.

(6) Shall not:

(a) Hunt;

1. On a WMA or portion of a WMA designated by a sign as closed to hunting; or

2. At an established access point, launching ramp, or recreation area.

(b) Enter a portion of a wildlife management area designated by a sign as closed to public access.

(c) Discharge a firearm within 100 yards of a residence or occupied building, whether or not the building is on a WMA.

(d) Camp, except in a designated area.

Section 3. [2:] Horseback Riding. A person shall not:

(1) Ride a horse on a WMA except:

(a) On:

- 1. A trail or area specifically marked for horseback riding; or
- 2. A maintained public road open to public vehicular traffic;

(b) During an event where a horse is allowed under a permit issued under the provisions of Section 6 of this administrative regulation; or

(c) While engaged in a legal hunting activity.

(2) Allow a horse to roam or graze on department property.

(3) Tether a horse in a way that would cause damage to a tree or shrub.

Section 4. Prohibited Activities. Except as authorized by the department, on a WMA a person shall not:

(1) Damage a tree or shrub;

(2) Dump trash or litter;

(3) Set fires, except for an attended campfire;

(4) Leave a campfire unattended;

(5) Cut or damage a fence or gate;

(6) Deface or destroy a sign;

(7) Destroy, harvest or glean a crop;

(8) Allow livestock to roam freely;

(9) Dump the contents of a holding tank, portable toilet or other container holding human waste;

(10) Deface or collect artifacts from historical or archeological sites;

(11) Ignite fireworks or rockets;

(12) Collect or remove plants;

(13) Place or cause to be placed an injurious substance on land or water;

(14) Engage in an activity which:

- (a) Is commercial in nature and intent; or
- (b) Could:

1. Unreasonably interfere with other uses or users of the area;

2. Pose a risk to persons or property; or

3. Damage facilities, roads, trails or ecosystems of the area.

Section 5. Use of Mechanized Vehicles. Except as specifically authorized by the department, on a WMA, a person shall not:

(1) Use a mechanized vehicle except:

- (a) On a maintained roads open to public use; or
- (b) In a designated parking area;

(2) [Operate a motor vehicle that is not properly licensed for use on a public highway;

(3) Park in a way that would:

(a) Block a road or gate; or

(b) Prevent access to a portion of the area.

Section 6. Group Permits. (1) A group shall not conduct an event upon department property without obtaining a permit at least thirty (30) days before the date of the event.

(2) Application for the permit shall be upon a form provided by the department.

(3) The department shall deny a permit for an event that involves:

(a) The use of mechanized vehicles, except for travel to and from the area; or

(b) An activity prohibited in Section 4 of this administrative regulation except that a commercial activity may be permitted if it is:

1. An informational booth;

2. A food vendor;

3. For collecting registration or entrance fees; or

4. A similar ancillary activity authorized by the event permit.

(4) The department may:

(a) Require the group to reschedule an event to avoid user conflicts;

(b) Restrict an event to a specified location within the WMA;

(c) Cancel a scheduled event if flooding, fire danger or other unforeseen circumstances render the WMA unsafe or unsuitable for the event; or

(d) Require the group to provide portable sanitary toilet facilities if existing facilities on the WMA are inadequate for the expected size of the group.

(5) The department shall revoke the permit and cancel an event if the group's behavior:

(a) Is rude, obnoxious, disruptive or disorderly;

(b) Creates a danger to the health or safety of other users;

(c) Results in damage to the area; or

(d) Violates a state or federal law.

(6) The department may deny a permit to a group which has had a previous event canceled under subsection (5) of this section.

Section 7. Appeal of Permit Denial. (1) A person who wishes to appeal the denial of a permit shall request a hearing in writing, post-marked or delivered in person to the department no later than ten (10) days after notification of denial.

(2) Upon receipt of the request for a hearing, the department shall:

(a) Appoint a hearing officer qualified to conduct hearings under the provisions of KRS Chapter 13B; and

(b) Schedule a hearing to be held either:

1. Prior to the next regularly scheduled meeting of the commission, if the request for a hearing is received more than thirty (30) days before the scheduled commission meeting; or

2. Within thirty (30) days, if the request for a hearing is received within thirty (30) days of the next scheduled commission meeting.

(3) The hearing officer shall conduct the hearing and present his recommendation at the commission meeting immediately following the hearing date.

(4) The department may present evidence and call witnesses to support the suspension or revocation.

(5) The commission shall make its decision by majority vote.

(6) A person may appeal a decision of the commission in accordance with the provisions of KRS Chapter 13B.

Section 8. On wildlife management areas not owned by the department, provisions of this administrative regulation shall not apply if:

(1) An activity prohibited by this administrative regulation is allowed by the entity owning the property; or

(2) An activity allowed by this administrative regulation is prohibited by the entity owning the property.

Section 9. Incorporation by Reference. (1) "Wildlife Management Area Use Permit Application", 1998 Edition, is incorporated by reference.

(2) It may be inspected, copied, or obtained at the Kentucky Department of Fish and Wildlife, #1 Game Farm Road, Frankfort, Kentucky 40601 from 8 a.m. to 4:30 p.m. Monday through Friday.

[Section 1. No person shall misuse the lands or waters owned or controlled by the Department of Fish and Wildlife Resources by acts such as, but not limited to, the cutting of trees, dumping of trash and littering, stealing or gleaning crops, permitting livestock to enter, cutting of fences, burning, damaging roads by entry of unauthorized equipment, or by any other act of depredation.

Section 2. Vehicles must use designated parking areas if such are available.

Section 3. Camping is permitted only in designated areas.

Section 4. No person may place any substance on or in department-owned or controlled lands or waters that may be injurious to aquatic life, wildlife or wildlife habitat, or allow any substances to escape onto lands or into waters or drainage systems of a water area.

Section 5. No vehicle, motorcycle or other mechanized equipment is permitted, except on maintained roads, unless authorized in writing by the Commissioner.

Section 6. Vehicles shall not be parked on Westvaco Public Hunting Areas in any manner which would block or deny access to any road.

Section 7. Open fires are not permitted on Westvaco Public Hunting Areas.]

C. THOMAS BENNETT, Commissioner

ANN R. LATTA, Secretary

MIKE BOATWRIGHT, Chairman

DOUGLAS SCOTT PORTER, Assistant Attorney General

APPROVED BY AGENCY: March 6, 1998

FILED WITH LRC: April 15, 1998 at 11 a.m.

**NATURAL RESOURCES AND
ENVIRONMENTAL PROTECTION CABINET
(As Amended at ARRS, June 9, 1998)**

405 KAR 16:060. General hydrologic requirements.

RELATES TO: KRS 350.100, 350.410, 350.420, 350.421, 350.440, 350.465, 30 CFR Parts 701.5, 730-733, 735, 816.41, 816.45, 816.47, 816.56, 816.57, 917, 30 USC 1253, 1255, 1265, 1307

STATUTORY AUTHORITY: KRS [Chapter 13A:] 350.028, 350.100, 350.420, 350.465, 30 CFR Parts 701.5, 730-733, 735, 816.41, 816.45, 816.47, 816.56, 816.57, 917, 30 USC 1253, 1255, 1265, 1307

NECESSITY, FUNCTION, AND CONFORMITY: KRS 350.028(1) and (5), 350.151(1), and 350.465(2) authorize the cabinet to promulgate administrative regulations relating to surface and underground coal mining operations. This administrative regulation establishes the requirements for the protection of the hydrologic balance, protection of surface and groundwater quantity and quality, control of erosion and sediment, control of acid-forming and toxic-forming materials, protection of streams, and the replacement of water supplies. This administrative regulation differs from federal regulations as follows: Section 8(1) requires that replacement of water supplies be done "promptly". This requirement appears in 30 CFR 817.41(j) relating to underground mines, but does not appear in 30 CFR 816.41(h) relating to surface mines. It is included in this administrative regulation because KRS 350.421(2), which requires replacement of the water supply, makes no distinction between underground and surface mines. [KRS 350.028(1) requires the cabinet to promulgate administrative regulations pertaining to surface coal mining operations including strip mining and the surface effects of underground mining to accomplish the purposes of KRS Chapter 350. This administrative regu-

lation applies to surface coal mining and reclamation operations except operations with surface effects of underground mining. This administrative regulation sets forth general requirements to protect the hydrologic balance, including general requirements for protection of surface and groundwater quantity and quality, control of erosion and sediment, control of acid-forming and toxic-forming materials, protection of streams, and replacement of water supplies. KRS 350.028(5), 350.151(1), and 350.465(2), (5) authorize and direct the cabinet to promulgate administrative regulations for surface and underground coal mining operations for the purpose of accepting and administering primary enforcement responsibilities under the permanent regulatory program pursuant to PL 95-87, the federal Surface Mining Control and Reclamation Act of 1977, and direct that the cabinet's administrative regulations be consistent with, and not more stringent than required by, that Act. PL 95-87 does not require Kentucky to comply with its provisions, but in order to retain primary enforcement responsibility under that Act the cabinet's administrative regulations must be consistent with federal regulations promulgated pursuant to that Act. Section 8 of this administrative regulation is being amended. This amendment differs from the federal regulations as follows:

1. Section 8(1) of this administrative regulation, which requires replacement of water supplies, further requires that the replacement be done promptly. "Promptly" does not appear in the federal counterpart for surface mines at 30 CFR 816.41(h), although it appears in the corresponding requirement for underground mines at 30 CFR 817.41(j). It is included in this administrative regulation in order to have the same water replacement requirements for surface mining operations as for underground mining operations, since KRS 350.421(2) makes no distinction between them. 2. Section 8(2)(a) of this administrative regulation, regarding replacement of domestic water supplies, includes requirements for emergency, temporary, and permanent replacement that are not included in the federal counterpart at 30 CFR 816.41(h) but are included in the definition of "replacement of water supply" at 30 CFR 701.5. It includes specific time frames for replacement that are not included in the federal regulations but are suggested in the preamble (60 FR 16727, March 31, 1995) to the federal regulations and are needed for fair and consistent enforcement of the requirement to promptly replace domestic water supplies. [3.] Section 8(2)(e) of this administrative regulation, regarding payment of excess delivery costs, includes a base time period of twenty (20) years that is not included in the federal regulations, and also includes more flexible payment options than the federal regulations. This time period is discussed as an example in the preamble at 60 FR 16726, March 31, 1995 and is needed for fair and consistent enforcement of the requirement to pay excess delivery costs. [4.] Section 8(4)(a) of this administrative regulation, regarding additional bond coverage when water supplies are damaged, does not appear in the federal counterpart at 30 CFR 816.41(h), but appears in the federal regulations on subsidence and water replacement at 30 CFR 817.121(c)(5) and in the cabinet's administrative regulation on water replacement by underground mines. 405 KAR 18:060, Section 12. The federal bonding regulations at 30 CFR 800.15 and the cabinet's bonding regulations at 405 KAR 10:020, Section 4, applicable to both surface mines and underground mines, require adjustment of the bond amount when the cost of future reclamation changes. This requirement is included in this administrative regulation in order to clearly set forth the bond adjustment requirements for water replacement by surface mines, and to place upon surface mines the same bond adjustment requirements for water replacement that 405 KAR 18:060, Section 12 places upon underground mines. 5. Section 8(4)(b) of this administrative regulation, regarding coverage of water replacement by liability insurance rather than additional performance bond, is not included in the federal counterpart at 30 CFR 816.41(h). The federal bonding regulation at 30 CFR 800.14(c) provides that the permittee's financial responsibility for repairing material damage resulting from subsidence under 30 CFR 817.121(c), which includes damage to water supplies, may be satisfied by the liability insurance policy required under 30 CFR 800.60. This provision is included in this administrative regulation in order to provide the same option to surface mining permittees that 405 KAR 18:060, Section 12 provides to underground mining permittees. [6.] Section 8(4)(c) of this administrative regulation, regarding prompt release or return of additional bond posted for water replacement, is not included in the federal regulations. This administrative regulation is

consistent with the purpose of the federal regulations because the bond cannot be [not] released or returned until after the permittee has completed the water supply replacement that the bond is intended to guarantee. [KRS Chapter 350 in pertinent part requires the cabinet to promulgate rules and administrative regulations establishing performance standards for protection of people and property, land, water and other natural resources, and aesthetic values, during surface mining activities and for restoration and reclamation of surface areas affected by mining activities. This administrative regulation sets forth general requirements for protection of the hydrologic balance, including general requirements for protection of surface and groundwater quantity and quality, control of erosion and sediment, protection of groundwater recharge capacity, protection of streams, and protection of water rights.]

Section 1. General Requirements. (1) All surface mining activities shall be planned and conducted to minimize disturbance of the hydrologic balance in both the permit area and adjacent areas, in order to:

- (a) Prevent material damage to the hydrologic balance outside the permit area;
- (b) Assure the protection or replacement of water rights; and
- (c) Support the approved postmining land uses in accordance with the terms and conditions of the approved permit and the performance standards of this administrative regulation.

(2) Changes in water quality and quantity, in the depth to groundwater, and in the location of surface water drainage channels shall be minimized so that the approved postmining land use of the permit area is not adversely affected.

(3) In no case shall federal and state water quality statutes, regulations, standards, or effluent limitations be violated.

(4) Operations shall be conducted to minimize water pollution and, where necessary, treatment methods shall be used to control water pollution.

(a) Each permittee shall emphasize mining and reclamation practices that prevent or minimize water pollution. Changes in flow of drainage shall be used in preference to the use of water treatment facilities.

(b) Acceptable practices to control and minimize water pollution include[, but are not limited to]:

- 1. Stabilizing disturbed areas through land shaping;
- 2. Diverting run-off;
- 3. Achieving quickly germinating and growing stands of temporary vegetation;
- 4. Regulating channel velocity of water;
- 5. Lining drainage channels with rock or vegetation;
- 6. Mulching;
- 7. Selectively placing and sealing acid-forming and toxic-forming materials;
- 8. Selectively placing waste materials in backfill areas; and
- 9. Implementing sediment control measures in Section 2 of this administrative regulation.

Section 2. Sediment Control Measures. (1) Appropriate sediment control measures shall be designed, constructed, and maintained using the best technology currently available to:

(a) Prevent, to the extent possible, additional contributions of sediment to stream flow or to run off outside the permit area;

(b) Meet the requirements of 405 KAR 16:070, Section 1(1)(g); and

(c) Minimize erosion to the extent possible.

(2) Sediment control measures include practices carried out within and adjacent to the disturbed area. The sediment storage capacity of measures in and downstream from the disturbed areas shall reflect the degree to which successful mining and reclamation techniques are applied to reduce erosion and control sediment. Sediment control measures consist of the utilization of proper mining and reclamation methods and sediment control practices, singly or in combination. Sediment control methods include [but are not limited to]:

(a) Disturbing the smallest practicable area at any one (1) time during the mining operation through progressive backfilling, grading and prompt revegetation as required in 405 KAR 16:200, Section 1(2);

(b) Stabilizing the backfilled material to promote a reduction in the rate and volume of run-off, in accordance with the requirements of 405 KAR 16:190;

(c) Retaining sediment within disturbed areas;

(d) Diverting run-off away from disturbed areas;

(e) Diverting run-off using protected channels or pipes through disturbed areas so as not to cause additional erosion;

(f) Using straw dikes, riprap, check dams, mulches, vegetative sediment filters, dugout ponds, and other measures that reduce overland flow velocity, reduce run-off volume, or trap sediment; and

(g) Treating with chemicals; and

(h) Using sedimentation ponds as required in 405 KAR 16:070.

Section 3. Discharge Structures. Discharge from sedimentation ponds, permanent and temporary impoundments, coal processing waste dams and embankments, and diversions shall be controlled, by energy dissipators, riprap channels, and other devices, where necessary, to reduce erosion, to prevent deepening or enlargement of stream channels, and to minimize disturbance of the hydrologic balance. Discharge structures shall be designed according to standard engineering design procedures.

Section 4. Acid-forming and Toxic-forming Materials. Acid drainage and toxic drainage shall be avoided by:

(1) Identifying, burying, and [and burying and/or] treating, in accordance with 405 KAR 16:190, Section 3, materials which may adversely affect water quality, or be detrimental to vegetation or to public health and safety if not buried and [or] treated;

(2) Storage, burial or treatment practices consistent with other material handling and disposal provisions of this chapter; and

(3) Burying or otherwise treating all acid-forming or toxic-forming spoil within thirty (30) days after it is first exposed on the mine site, or within a lesser period required by the cabinet. Temporary storage of the spoil may be approved by the cabinet upon a finding that burial or treatment within thirty (30) days is not feasible and will not result in any material risk of water pollution or other environmental damage. Storage shall be limited to the period until burial or treatment first becomes feasible. Acid-forming or toxic-forming spoil to be stored shall be placed on impermeable material and protected from erosion and contact with surface water.

Section 5. Groundwater Protection and Recharge Capacity. In order to protect the hydrologic balance, surface mining activities shall be conducted according to 405 KAR 8:030, Section 32(1) and (2) and the following:

(1) Groundwater quality shall be protected by handling earth materials and run-off in a manner that minimizes acidic, toxic, or other harmful infiltration to groundwater systems and by managing excavations and other disturbances to prevent or control the discharge of pollutants into the groundwater; and

(2) Groundwater quantity shall be protected by handling earth materials and run-off in a manner that will restore the approximate premining recharge capacity of the reclaimed area as a whole, excluding coal mine waste disposal areas and excess spoil fills, so as to allow the movement of water to the groundwater system.

Section 6. Surface Water Protection. In order to protect the hydrologic balance, surface mining activities shall be conducted according to 405 KAR 8:030, Section 32(1) and (2) and the following:

(1) Surface water quality shall be protected by handling earth materials, groundwater discharges, and run-off in a manner that:

(a) Minimizes the formation of acidic or toxic drainage;

(b) Prevents, to the extent possible using the best technology currently available, additional contribution of suspended solids to stream flow outside the permit area; and

(c) Will not cause or contribute to a violation of any federal or state effluent limitations or water quality standards.

(2) If drainage control, restabilization and revegetation of disturbed areas, diversion of run-off, mulching, or other reclamation and remedial practices are not adequate to meet the requirements of this section and 405 KAR 16:070, the operator shall use and maintain the necessary water-treatment facilities or water quality controls for as long as treatment is required under this chapter; and

(3) Surface water quantity and flow rates shall be protected by handling earth materials and run-off in accordance with the steps outlined in the plan approved under 405 KAR 8:030, Section 32(1) and (2).

Section 7. Transfer of Wells. Before final release of bond, exploratory or monitoring wells shall be sealed in a safe and environmentally sound manner in accordance with 405 KAR 16:040. With the prior approval of the regulatory authority, wells may be transferred to another party for further use. At a minimum, the conditions of such transfer shall comply with state and local law and the permittee shall remain responsible for the proper management of the well until bond release in accordance with 405 KAR 16:040.

Section 8. Replacement of Water Supply. (1)(a) If the cabinet receives a citizen's complaint under 405 KAR 12:030 that the person's water supply has been adversely impacted by the activities of a permittee named in the complaint, the cabinet shall promptly notify the permittee of the complaint.

(b) The [Water Rights and Replacement-Any] permittee or operator shall promptly replace the water supply of an owner of interest in real property who obtains all or part of his [or her] supply of water for domestic, agricultural, industrial, or other legitimate use from an underground or surface source, if [where] the water supply has been adversely impacted by contamination, diminution, or interruption proximately resulting from the surface mining activities. Baseline geologic and hydrologic information required in 405 KAR 8:030, Sections 12 through 16, and other relevant information available to the cabinet, shall be used to determine [the extent of] the impact of mining activities upon the water supply [groundwater and surface water]. [If the cabinet determines that a protected water supply has been contaminated, diminished, or interrupted by the mining operation, the cabinet shall issue a notice of noncompliance to the permittee or operator, and order the replacement of the water supply.]

(2) If replacement of a water supply is required under subsection (1) of this section the permittee shall:

(a) If the water supply to be replaced is a domestic supply, provide water supply on both a temporary and permanent basis in accordance with this paragraph:

1. Within forty-eight (48) hours after receiving notice from the cabinet that the water supply was adversely impacted by mining, provide drinking water on an emergency basis;

2. Within two (2) weeks after receiving notice from the cabinet that the water supply was adversely impacted by mining, provide a temporary water supply connected to the existing plumbing, if any, that provides water for all ordinary household purposes including [such as] drinking, cooking, bathing, sanitation, and laundry, and drinking water for poultry, livestock, and domestic animals, and water for noncommercial domestic agricultural and horticultural activities;

3. Within two (2) years after receiving notice from the cabinet that the water supply was adversely impacted by mining, provide a satisfactory permanent water supply;

(b) If the water supply to be replaced is other than a domestic supply, provide water supply on both a temporary and permanent basis on a schedule established by the cabinet on a case-by-case basis;

(c) Provide water supply equivalent to premining quantity and quality;

(d) Provide an equivalent water delivery system; and

(e) Pay operation and maintenance costs in excess of customary and reasonable delivery costs for the premining water supply for a period of twenty (20) years, or other period agreed to by the permittee and the owner of interest. Upon agreement by the permittee and the owner of interest, the obligation to pay the excess operation and maintenance costs may be satisfied by:

1. A one (1) time payment in an amount which covers the present worth of the increased annual operation and maintenance costs for a period of twenty (20) years, or other period agreed to by the permittee and the owner of interest;

2. A uniform series of payments whose present worth equals or exceeds the present worth of the increased annual operation and maintenance costs for a period of twenty (20) years, or other period agreed to by the permittee and the owner of interest; or

3. Other reasonable compensation arrangements which fairly compensate the owner for the future operation and maintenance costs for a period of twenty (20) years, or other period agreed to by the permittee and the owner of interest.

(3) If the affected water supply was not needed for the land use in existence at the time of loss, contamination, or diminution, and if the supply is not needed to achieve the postmining land use, replacement requirements may be satisfied by demonstrating that a suitable alternative water source is available and could feasibly be developed. If this approach is selected, written concurrence shall be obtained from the owner of interest.

(4)(a) If contamination, diminution, or interruption to a water supply protected under subsection (1) of this section occurs, the cabinet shall require the permittee to obtain additional performance bond in the amount of the estimated cost to replace the protected water supply, until the replacement is completed. If replacement is completed within ninety (90) days of the occurrence, additional bond shall not be required. The cabinet may extend the ninety (90) day time frame, but not to exceed one (1) year, if the permittee demonstrates and the cabinet finds in writing that not all reasonably anticipated changes affecting the protected water supply have occurred, and that therefore it would be unreasonable to complete the replacement within ninety (90) days.

(b) If the permittee demonstrates that his liability insurance policy under 405 KAR 10:030, Section 4 covers the replacement, the additional bond amount required under paragraph (a) of this subsection may be reduced by the amount of the insurance coverage applicable to the replacement. The existence of applicable insurance coverage shall not prevent forfeiture of a performance bond under 405 KAR 10:050.

(c) The cabinet may promptly release or return the additional bond amount provided under paragraph (a) of this subsection if the cabinet determines, based upon an application and information submitted by the permittee, the cabinet's own investigation as appropriate, and other information available to the cabinet, that the permittee has satisfactorily completed the required replacement.

Section 9. Discharges Into an Underground Mine. (1) Discharges into an underground mine are prohibited, unless specifically approved by the cabinet after a demonstration that the discharge will:

(a) Minimize disturbance to the hydrologic balance on the permit area, prevent material damage outside the permit area and otherwise eliminate public hazards resulting from surface mining activities;

(b) Not result in a violation of applicable water quality standards or effluent limitations;

(c) Be at a known rate and quality which shall meet the effluent limitations of 405 KAR 16:070 for pH and total suspended solids, except that the pH and total suspended-solids limitations may be exceeded, if approved by the cabinet; and

(d) Meet with the approval of the Mine Safety and Health Administration.

(2) Discharges shall be limited to the following:

(a) Coal processing waste;

(b) Fly ash from a coal-fired facility;

(c) Sludge from an acid mine drainage treatment facility;

(d) Flue gas desulfurization sludge;

(e) Inert materials used for stabilizing underground mines;

(f) Underground mine development wastes; and

(g) Water.

Section 10. Postmining Rehabilitation of Sedimentation Ponds, Diversions, Impoundments, and Treatment Facilities. Before abandoning the permit area, the permittee shall renovate all permanent sedimentation ponds, diversions, impoundments, and treatment facilities as necessary to meet criteria specified in the detailed design plan for the permanent structures and impoundments.

Section 11. Stream Buffer Zones. (1) No land within 100 feet of an intermittent or perennial stream shall be disturbed by surface mining activities unless the cabinet specifically authorizes surface mining activities closer to, or through, such a stream. The cabinet may authorize such activities only upon finding, as a result of evaluating a permit application, that:

(a) Surface mining activities will not cause or contribute to the violation of applicable state or federal water quality standards;

(b) Surface mining activities will not cause significant detrimental effects on the water quantity or quality of the intermittent or perennial stream; provided however, this paragraph shall not apply to any reach of that stream that is upstream of an impounding structure located within the permit area and within the stream channel;

(c) Surface mining activities will not cause significant detrimental effects on other valuable environmental resources, as determined by the cabinet, of the stream; and

(d) If there will be a temporary or permanent stream-channel diversion, it will comply with 405 KAR 16:080.

(2) The area that is not to be disturbed shall be designated a buffer zone, shall be adequately shown in the permit application, and shall be marked by the permittee as specified in 405 KAR 16:030.

(3) Descriptions, drawings, data, and all other information required by the cabinet to make the findings of subsection (1) of this section shall be submitted in a permit application in a manner prescribed by the cabinet.

(4)(a) The provisions of the amendments to this section shall apply to all surface mining activities, except as provided in paragraph (b) of this subsection.

(b)1. Surface mining activities included in a permit issued on or before August 17, 1987 shall be subject to the provisions that preceded the amendments to this section in lieu of the provisions of subsections (1) through (3) of this section.

2. Surface mining activities included in a permit application determined to be complete pursuant to 405 KAR 8:010, Section 13(1) on or before August 17, 1987 shall be subject to the provisions that preceded the amendments to this section in lieu of the provisions of subsections (1) through (3) of this section.

Section 12. Discharges of Accumulated Water. (1) Any accumulated water to be removed from a pit, bench, or other disturbed area shall be pumped, siphoned, or otherwise conveyed in a controlled manner to a natural or constructed drainway as approved by the cabinet.

(2) Such accumulated water may be discharged from the permit area without treatment only if the untreated discharge meets the requirements of 405 KAR 16:070, Section 1(1)(g).

(3) The moving of spoil or overburden or the disturbance of the natural barrier required by 405 KAR 16:010, Section 4, in order to release such accumulated water is prohibited, except when specifically authorized by the cabinet.

JAMES E. BICKFORD, Secretary

GLENN A. JO CURRY, General Counsel

APPROVED BY AGENCY: November 14, 1997

FILED WITH LRC: November 14, 1997

**NATURAL RESOURCES AND
ENVIRONMENTAL PROTECTION CABINET
Department for Surface Mining
Reclamation and Enforcement
(As Amended at ARRS, June 9, 1998)**

405 KAR 18:060. General hydrologic requirements.

RELATES TO: KRS 350.100, 350.151, 350.420, 350.421, 350.440, 350.465, 30 CFR Parts 701.5, 730-733, 735, 817.41, 817.45, 817.47, 817.56, 817.57, 917, 30 USC 1253, 1255, 1266, 1309a

STATUTORY AUTHORITY: KRS [Chapter 13A,] 350.028, 350.100, 350.151, 350.420, 350.465, 30 CFR Parts [701.5,] 730-733, 735, 817.41, 817.45, 817.47, 817.56, [817.57,] 917, 30 USC 1253, 1255, 1266, 1309a

NECESSITY, FUNCTION, AND CONFORMITY: KRS 350.028(1) and (5), 350.151(1), and 350.465(2) and (5) authorize the cabinet to promulgate administrative regulations relating to surface and underground coal mining operations. This administrative regulation establishes the requirements for the protection of the hydrologic balance, protection of surface and groundwater quantity and quality, control of erosion and sediment, control of acid-

forming and toxic-forming materials, protection of streams, and the replacement of water supplies for underground mines. This administrative regulation differs from federal regulations as follows: KRS 350.421(2) requires replacement of water supplies for domestic, agricultural, industrial, or other legitimate use. The federal regulation, 30 CFR 817.41(j), requires replacement of water for drinking, domestic, or residential uses. Section 12(1) follows the state requirement, [KRS 350.028(1) requires the cabinet to promulgate administrative regulations pertaining to surface coal mining operations including strip mining and the surface effects of underground mining to accomplish the purposes of KRS Chapter 350. This administrative regulation applies to surface coal mining and reclamation operations with surface effects of underground mining. This administrative regulation sets forth general requirements to protect the hydrologic balance, including general requirements for protection of surface and groundwater quantity and quality, control of erosion and sediment, control of acid-forming and toxic-forming materials, protection of streams, and replacement of water supplies. KRS 350.028(5), 350.151(1), and 350.465(2), (5) authorize and direct the cabinet to promulgate administrative regulations for surface and underground coal mining operations for the purpose of accepting and administering primary enforcement responsibilities under the permanent regulatory program pursuant to PL 95-87, the federal Surface Mining Control and Reclamation Act of 1977, and direct that the cabinet's administrative regulations be consistent with, and not more stringent than required by, that Act. PL 95-87 does not require Kentucky to comply with its provisions, but in order to retain primary enforcement responsibility under that Act the cabinet's administrative regulations must be consistent with federal regulations promulgated pursuant to that Act. This administrative regulation is amended by inserting new Section 12 relating to replacement of water supplies. This amendment differs from the federal regulations as follows:

— 1. Section 12(1) of this administrative regulation, regarding replacement of water supplies, requires replacement of supplies for domestic, agricultural, industrial, or other legitimate use, from underground or surface sources affected by underground mining activities conducted after July 16, 1994, whereas the federal counterpart at 30 CFR 817.41(j) requires replacement of drinking, domestic or residential supplies from wells or springs affected by mining conducted after October 24, 1992, if the well or spring was in existence before the date the regulatory authority received the permit application. This administrative regulation is based on KRS 350.421(2), whereas the federal regulation is based on 30 USC 1309a-2.] Section 12(2)(a) of this administrative regulation, regarding replacement of domestic water supplies, includes requirements for emergency, temporary, and permanent replacement that are not included in the federal counterpart at 30 CFR 817.41(j) but are included in the definition of "replacement of water supply" at 30 CFR 701.5. It includes specific time frames for replacement that are not included in the federal regulations but are suggested in the preamble (60 FR 16727, March 31, 1995) to the federal regulations and are needed for fair and consistent enforcement of the requirement to promptly replace domestic water supplies. [3.] Section 12(2)(e) of this administrative regulation, regarding payment of excess delivery costs, includes a base time period of twenty (20) years that is not included in the federal regulations, and also includes more flexible payment options than the federal regulations. This time period is discussed as an example in the preamble at 60 FR 16726, March 31, 1995 and is needed for fair and consistent enforcement of the requirement to pay excess delivery costs. [4. Section 12(4)(a) of this administrative regulation, regarding additional bond coverage when water supplies are damaged, does not appear in the federal counterpart at 30 CFR 817.41(j) but appears in the federal subsidence regulation at 30 CFR 817.121(c)(5). This requirement is included in Section 12 of this administrative regulation, which requires water replacement, rather than the cabinet's subsidence requirements at 405 KAR 18:210, because the additional bond coverage is needed regardless of whether the water supply replacement was necessitated by subsidence or by some other factor of the underground mining. 5.] Section 12(4)(b) of this administrative regulation, regarding coverage of water replacement by liability insurance rather than additional performance bond, is not included in the federal counterpart at 30 CFR 817.41(j) or the federal subsidence regulation at 30 CFR 817.121(c)(5), but the federal bonding regulation at 30 CFR 800.14(c) provides that the per-

mittee's financial responsibility for repairing material damage resulting from subsidence under 30 CFR 817.121(c) may be satisfied by the liability insurance policy required under 30 CFR 800.60. [6.] Section 12(4)(c) of this administrative regulation, regarding prompt release or return of additional bond posted for water replacement, is not included in the federal regulations. This administrative regulation is consistent with the purpose of the federal regulations because the bond cannot be [not] released or returned until after the permittee has completed the water supply replacement that the bond is intended to guarantee. [KRS Chapter 350 in pertinent part requires the cabinet to promulgate rules and administrative regulations establishing performance standards for protection of people and property, land, water and other natural resources, and aesthetic values, during underground mining activities and for restoration and reclamation of surface areas affected by underground mining activities. This administrative regulation sets forth general requirements for protection of the hydrologic balance, including general requirements for protection of surface and groundwater quantity and quality, prevention and control of drainage from underground workings, control of erosion and sediment, protection of streams, and control of discharges into underground workings.]

Section 1. General Requirements. (1) All underground mining activities shall be planned and conducted to minimize disturbance of the hydrologic balance in both the permit area and adjacent areas, in order to:

- (a) Prevent material damage to the hydrologic balance outside the permit area;
- (b) Support the approved postmining land uses in accordance with the terms and conditions of the approved permit and the performance standards of this administrative regulation.
- (2) Changes in water quality and quantity, in the depth to groundwater, and in the location of surface water drainage channels shall be minimized so that the approved postmining land use of the permit area is not adversely affected.
- (3) In no case shall federal and state water quality statutes, regulations, standards, or effluent limitations be violated.
- (4) Operations shall be conducted to minimize water pollution and, if [where] necessary, treatment methods shall be used to control water pollution.
- (a) Each permittee shall emphasize mining and reclamation practices that prevent or minimize water pollution. Changes in flow of drainage shall be used in preference to the use of water treatment facilities.
- (b) Acceptable practices to control and minimize water pollution include[-, but are not limited to]:
 1. Stabilizing disturbed areas through land shaping;
 2. Diverting run-off;
 3. Achieving quickly germinating and growing stands of temporary vegetation;
 4. Regulating channel velocity of water;
 5. Lining drainage channels with rock or vegetation;
 6. Mulching;
 7. Selectively placing and sealing acid-forming and toxic-forming materials;
 8. Designing mines to prevent or control gravity drainage of acid waters;
 9. Sealing;
 10. Controlling subsidence;
 11. Preventing acid mine drainage; and
 12. Implementing sediment control measures in Section 2 of this administrative regulation.

Section 2. Sediment Control Measures. (1) Appropriate sediment control measures shall be designed, constructed, and maintained using the best technology currently available to:

- (a) Prevent, to the extent possible, additional contributions of sediment to stream flow or to run off outside the permit area;
- (b) Meet the requirements of 405 KAR 18:070, Section 1(1)(g); and
- (c) Minimize erosion to the extent possible.
- (2) Sediment control measures include practices carried out within and adjacent to the disturbed area. The sediment storage capacity of measures in and downstream from the disturbed areas shall reflect the

VOLUME 25, NUMBER 1 – JULY 1, 1998

degree to which successful mining and reclamation techniques are applied to reduce erosion and control sediment. Sediment control measures consist of the utilization of proper mining and reclamation methods and sediment control practices, singly or in combination. Sediment control methods include ~~[but are not limited to]:~~

- (a) Disturbing the smallest practicable area at any one (1) time during the mining operation through progressive backfilling, grading and prompt revegetation as required in 405 KAR 18:200, Section 1(2);
- (b) Stabilizing the backfilled material to promote a reduction in the rate and volume of run-off, in accordance with the requirements of 405 KAR 18:190;
- (c) Retaining sediment within disturbed areas;
- (d) Diverting run-off away from disturbed areas;
- (e) Diverting run-off using protected channels or pipes through disturbed areas so as not to cause additional erosion;
- (f) Using straw dikes, riprap, check dams, mulches, vegetative sediment filters, dugout ponds, and other measures that reduce overland flow velocity, reduce run-off volume, or trap sediment;
- (g) Treating with chemicals;
- (h) Treating mine drainage in underground sumps; and
- (i) Using sedimentation ponds as required in 405 KAR 18:070.

Section 3. Discharge Structures. Discharge from sedimentation ponds, permanent and temporary impoundments, coal processing waste dams and embankments, and diversions shall be controlled, by energy dissipators, riprap channels, and other devices, if [where] necessary, to reduce erosion, to prevent deepening or enlargement of stream channels, and to minimize disturbance of the hydrologic balance. Discharge structures shall be designed according to standard engineering design procedures.

Section 4. Acid-forming and Toxic-forming Materials. Acid drainage and toxic drainage shall be avoided by:

- (1) Identifying, burying, and ~~[burying and/or]~~ treating, in accordance with 405 KAR 18:190, Section 3, materials which may adversely affect water quality, or be detrimental to vegetation or to public health and safety if not buried and ~~[or]~~ treated;
- (2) Storage, burial or treatment practices consistent with other material handling and disposal provisions of this chapter; and
- (3) Burying or otherwise treating all acid-forming or toxic-forming underground development waste and spoil within thirty (30) days after they are first exposed on the mine site, or within a lesser period required by the cabinet. Temporary storage of these [such] materials may be approved by the cabinet upon a finding that burial or treatment within thirty (30) days is not feasible and will not result in any material risk of water pollution or other environmental damage. Storage shall be limited to the period until burial or treatment first becomes feasible. Acid-forming or toxic-forming underground waste and spoil to be stored shall be placed on impermeable material and protected from erosion and contact with surface water.

Section 5. Groundwater Protection. In order to protect the hydrologic balance, surface mining activities shall be conducted according to 405 KAR 8:040, Section 32(1) and (2) and groundwater quality shall be protected by handling earth materials and run-off in a manner that minimizes acidic, toxic, or other harmful infiltration to groundwater systems and by managing excavations and other disturbances to prevent or control the discharge of pollutants into the groundwater.

Section 6. Surface Water Protection. In order to protect the hydrologic balance, surface mining activities shall be conducted according to 405 KAR 8:040, Section 32(1) and (2) and the following:

- (1) Surface water quality shall be protected by handling earth materials, groundwater discharges, and run-off in a manner that:
 - (a) Minimizes the formation of acidic or toxic drainage;
 - (b) Prevents, to the extent possible using the best technology currently available, additional contribution of suspended solids to stream flow outside the permit area; and
 - (c) Will not cause or contribute to a violation of any federal or state effluent limitations or water quality standards.
- (2) If drainage control, restabilization and revegetation of disturbed areas, diversion of run-off, mulching, or other reclamation and remedial practices are not adequate to meet the requirements of this sec-

tion and 405 KAR 18:070, the operator shall use and maintain the necessary water-treatment facilities or water quality controls for as long as treatment is required under this chapter; and

- (3) Surface water quantity and flow rates shall be protected by handling earth materials and run-off in accordance with the steps outlined in the plan approved under 405 KAR 8:040, Section 32(1) and (2).

Section 7. Transfer of Wells. Before final release of bond, exploratory or monitoring wells shall be sealed in a safe and environmentally sound manner in accordance with 405 KAR 18:040. With the prior approval of the regulatory authority, wells may be transferred to another party for further use. At a minimum, the conditions of such transfer shall comply with state and local law and the permittee shall remain responsible for the proper management of the well until bond release in accordance with 405 KAR 18:040.

Section 8. Gravity Discharges from Underground Mines. Surface entries and accesses to underground workings shall be located and managed to prevent or control gravity discharge of water from the mine.

- (1) Gravity discharges of water from an underground mine, other than a drift mine subject to subsection (2) of this section, may be allowed by the cabinet if it is demonstrated that the untreated or treated discharge complies with the performance standards of this chapter and any additional KPDES permit requirements.

- (2) Notwithstanding anything to the contrary in subsection (1) of this section, the surface entries and accesses of drift mines first used after May 18, 1982 and located in acid-producing or iron-producing coal seams shall be located in [such] a manner as to prevent any gravity discharge from the mine.

Section 9. Discharges Into an Underground Mine. (1) Discharges into an underground mine are prohibited, unless specifically approved by the cabinet after a demonstration that the discharge will:

- (a) Minimize disturbance to the hydrologic balance on the permit area, prevent material damage outside the permit area and otherwise eliminate public hazards resulting from surface mining activities;
 - (b) Not result in a violation of applicable water quality standards or effluent limitations;
 - (c) Be at a known rate and quality which shall meet the effluent limitations of 405 KAR 18:070 for pH and total suspended solids, except that the pH and total suspended-solids limitations may be exceeded, if approved by the cabinet; and
 - (d) Meet with the approval of the Mine Safety and Health Administration.
- (2) Discharges shall be limited to the following:
 - (a) Coal processing waste;
 - (b) Underground mine development waste;
 - (c) Fly ash from a coal-fired facility;
 - (d) Sludge from an acid mine drainage treatment facility;
 - (e) Flue gas desulfurization sludge;
 - (f) Inert materials used for stabilizing underground mines; and
 - (g) Water.
 - (3) Water from one (1) underground mine may be diverted into other underground workings according to the requirements of this section and as approved in the permit.

Section 10. Postmining Rehabilitation of Sedimentation Ponds, Diversions, Impoundments, and Treatment Facilities. Before abandoning the permit area, the permittee shall renovate all permanent sedimentation ponds, diversions, impoundments and treatment facilities as necessary to meet criteria specified in the detailed design plan for the permanent structures and impoundments.

Section 11. Stream Buffer Zones. (1) No land within 100 feet of an intermittent or perennial stream shall be disturbed by underground mining activities unless the cabinet specifically authorizes underground mining activities closer to, or through the [-such-a] stream. The cabinet may authorize this activity [such activities] only upon finding, as a result of evaluating a permit application, that:

- (a) Underground mining activities will not cause or contribute to the violation of applicable state or federal water quality standards;

VOLUME 25, NUMBER 1 – JULY 1, 1998

(b) Underground mining activities will not cause significant detrimental effects on the water quantity or quality of the intermittent or perennial stream; [provided] however, this paragraph shall not apply to any reach of that stream that is upstream of an impounding structure located within the permit area and within the stream channel;

(c) Underground mining activities will not cause significant detrimental effects on other valuable environmental resources, as determined by the cabinet, of the stream; and

(d) If there will be a temporary or permanent stream-channel diversion, it shall [will] comply with 405 KAR 18:080.

(2) The area that is not to be disturbed shall be designated a buffer zone, shall be adequately shown in the permit application, and shall be marked by the permittee as specified in 405 KAR 18:030.

(3) Descriptions, drawings, data, and all other information required by the cabinet to make the findings of subsection (1) of this section shall be submitted in a permit application in a manner prescribed by the cabinet.

(4)(a) The provisions of the amendments to this section shall apply to all underground mining activities, except as provided in paragraph (b) of this subsection.

(b)1. Underground mining activities included in a permit issued on or before August 17, 1987 shall be subject to the provisions that preceded the amendments to this section in lieu of the provisions of subsections (1) through (3) of this section.

2. Underground mining activities included in a permit application determined to be complete pursuant to 405 KAR 8:010, Section 13(1) on or before August 17, 1987 shall be subject to the provisions that preceded the amendments to this section in lieu of the provisions of subsections (1) through (3) of this section.

Section 12. Replacement of Water Supply. (1)(a) If the cabinet receives a citizen's complaint under 405 KAR 12:030 that the person's water supply has been adversely impacted by the activities of a permittee named in the complaint, the cabinet shall promptly notify the permittee of the complaint.

(b) The permittee or operator shall promptly replace the water supply of an owner of interest in real property who obtains all or part of his supply of water for domestic, agricultural, industrial, or other legitimate use from an underground or surface source, if the water supply has been adversely impacted by contamination, diminution, or interruption proximately resulting from the underground mining activities conducted after July 16, 1994. Baseline geologic and hydrologic information required in 405 KAR 8:040, Sections 12 through 16, and other relevant information available to the cabinet, shall be used to determine the impact of mining activities upon the water supply. [If the cabinet determines that a protected water supply has been contaminated, diminished, or interrupted by the mining operation, the cabinet shall issue a notice of noncompliance to the permittee or operator, and order the replacement of the water supply.]

(2) If replacement of a water supply is required under subsection (1) of this section the permittee shall:

(a) If the water supply to be replaced is a domestic supply, provide water supply on both a temporary and permanent basis in accordance with this paragraph;

1. Within forty-eight (48) hours after receiving notice from the cabinet that the water supply was adversely impacted by mining, provide drinking water on an emergency basis;

2. Within two (2) weeks after receiving notice from the cabinet that the water supply was adversely impacted by mining, provide a temporary water supply connected to the existing plumbing, if any, that provides water for all ordinary household purposes including [such as] drinking, cooking, bathing, sanitation, and laundry, and drinking water for poultry, livestock, and domestic animals, and water for noncommercial domestic agricultural and horticultural activities;

3. Within two (2) years after receiving notice from the cabinet that the water supply was adversely impacted by mining, provide a satisfactory permanent water supply;

(b) If the water supply to be replaced is other than a domestic supply, provide water supply on both a temporary and permanent basis on a schedule established by the cabinet on a case-by-case basis;

(c) Provide water supply equivalent to premining quantity and quality;

(d) Provide an equivalent water delivery system; and

(e) Pay operation and maintenance costs in excess of customary and reasonable delivery costs for the premining water supply for a period of twenty (20) years, or other period agreed to by the permittee and the owner of interest. Upon agreement by the permittee and the owner of interest, the obligation to pay the excess operation and maintenance costs may be satisfied by:

1. A one (1) time payment in an amount which covers the present worth of the increased annual operation and maintenance costs for a period of twenty (20) years, or other period agreed to by the permittee and the owner of interest;

2. A uniform series of payments whose present worth equals or exceeds the present worth of the increased annual operation and maintenance costs for a period of twenty (20) years, or other period agreed to by the permittee and the owner of interest; or

3. Other reasonable compensation arrangements which fairly compensate the owner for the future operation and maintenance costs for a period of twenty (20) years, or other period agreed to by the permittee and the owner of interest.

(3) If the affected water supply was not needed for the land use in existence at the time of loss, contamination, or diminution, and if the supply is not needed to achieve the postmining land use, replacement requirements may be satisfied by demonstrating that a suitable alternative water source is available and could feasibly be developed. If this approach is selected, written concurrence shall be obtained from the owner of interest.

(4)(a) If contamination, diminution, or interruption to a water supply protected under subsection (1) of this section occurs, the cabinet shall require the permittee to obtain additional performance bond in the amount of the estimated cost to replace the protected water supply, until the replacement is completed. If replacement is completed within ninety (90) days of the occurrence, additional bond shall not be required. The cabinet may extend the ninety (90) day time frame, but shall not [te] exceed one (1) year, if the permittee demonstrates and the cabinet finds in writing that not all reasonably anticipated changes affecting the protected water supply have occurred, and that therefore it would be unreasonable to complete the replacement within ninety (90) days.

(b) If the permittee demonstrates that his liability insurance policy under 405 KAR 10:030, Section 4 covers the replacement, the additional bond amount required under paragraph (a) of this subsection may be reduced by the amount of the insurance coverage applicable to the replacement. The existence of applicable insurance coverage shall not prevent forfeiture of a performance bond under 405 KAR 10:050.

(c) The cabinet may promptly release or return the additional bond amount provided under paragraph (a) of this subsection if the cabinet determines, based upon an application and information submitted by the permittee, the cabinet's own investigation as appropriate, and other information available to the cabinet, that the permittee has satisfactorily completed the required replacement.

JAMES E. BICKFORD, Secretary

GLENN A. JO CURRY, General Counsel

APPROVED BY AGENCY: November 14, 1997

FILED WITH LRC: November 14, 1997 at noon

JUSTICE CABINET
Kentucky Parole Board
(As Amended at ARRS, June 9, 1998)

501 KAR 1:030. Determining parole eligibility.

RELATES TO: KRS 439.340(3)

STATUTORY AUTHORITY: KRS 439.340(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 439.340 requires the Kentucky Parole Board to promulgate [adopt] administrative regulations with respect to eligibility of prisoners for parole. This administrative regulation establishes the criteria for determining parole eligibility.

Section 1. Definitions. As used in these administrative regulations, unless the content otherwise requires:

VOLUME 25, NUMBER 1 – JULY 1, 1998

(1) "Board" means the Kentucky Parole Board ~~for a quorum thereof~~.

(2) "Chair" means the chairman of the board.

(3) "Deferment" means a decision by the board that an inmate shall serve a specific number of months before further parole consideration.

(4) "Detainer" means a document issued or made by a legal authority, authorizing the keeper of a prison or jail to keep the person named in the document in custody.

(5) ~~["Panel" means anything less than a quorum;~~

(6) "Parole" means the release of an inmate with a signed parole certificate to:

(a) The community prior to the expiration of his sentence, subject to conditions imposed by the board and subject to its supervision;

(b) ~~["If a court or other authority has issued a detainer against the inmate, the board, in its discretion, may release him to"]~~ Answer the detainer.

(6) [(7)] "Parole recommendation" means a decision of the board that an inmate may be released from incarceration prior to the expiration of his sentence if the inmate has an approved parole plan pursuant to KRS 439.340(2) and has signed his parole certificate.

(7) [(8)] "Parole rescission" means a decision of the board to terminate or rescind an inmate's parole recommendation, before the inmate is actually released on parole.

(8) [(9)] "Parole revocation" means the formal procedure by which the board may terminate or revoke a parolee's release on parole.

(9) [(10)] "Preliminary revocation hearing" means the initial hearing conducted by a hearing officer ~~[an administrative law judge]~~ to determine whether probable cause exists to believe a parolee has violated the conditions of his parole.

[(11)] "Quorum" means the number of members of any body who shall be present in order for the body to transact business.]

(10) [(12)] "Reconsideration" means a decision to review a previous board action.

(11) [(13)] "Serve-out", "SOT", or "serve-out time" means a decision of the board that an inmate shall serve until the completion of his sentence (SOT - serve-out time).

(12) [(14)] "Youthful offender" is defined in KRS 635.020(2) to (8), ~~[and proceeded against in accordance with KRS 640.010.]~~

Section 2. ~~[Statement of Content. (1) It is the intent of the Kentucky General Assembly in creating the board that it be autonomous and in all respects functionally and administratively separate from any other state agency, except as provided in KRS 439.320(1). Consequently, the board shall protect its necessary freedom from real or apparent political control, manipulation or undue or improper influence by any person, group or other entity;~~

(2) ~~A decision of the board regarding policy, procedures and its actions in parole matters shall be determined by simple majority vote of the members of the board, except as provided in KRS 439.320(2). Panels of the board may make recommendations to the full board if authorized;~~

Section 3. ~~Administration. (1) Board structure. The composition of the board shall be as provided by law. The appointment of members of the board, the selection of its chair, and the quorum requirements shall be those specified by law;~~

(2) ~~Information concerning the board;~~

(a) ~~The board shall provide and disseminate written information concerning its functions;~~

(b) ~~The board shall maintain close communication and cooperation with the Justice Cabinet and the Department of Corrections, the Governor and his staff, members and committees of the General Assembly, and other public officials, including judges, state attorney general, Commonwealth attorney, law enforcement officials and public defenders. The board shall communicate and cooperate with public and private service agencies, including, an agency which deals with mental health, vocational rehabilitation, legal aid, human services and victims of crime;~~

(c) ~~Since the board has the authority to grant parole, it welcomes the opinion of the sentencing judge, prosecuting attorney, other public officials, and private citizens, including victims of crime, concerning parole consideration;~~

~~Section 4.] Parole Eligibility. (1) Initial parole review date,~~

(a) A person confined to a state penal institution or county jail who has been convicted of a felony offense committed after the effective date of this administrative regulation shall have his case reviewed by the board, unless otherwise prohibited by statute, in accordance with the following schedule:

Sentence Being Served	Time Service Required Before First Review (Minus Jail Credit)
1 year, up to but not including 2 years	4 months
2 years, up to and including 39 years	20% of sentence received
More than 39 years, up to and including life	8 years
Persistent felony offender I in conjunction with a Class A, B or C felony	10 years

For the crimes, committed on or after July 15, 1986, of murder, manslaughter I, rape I, sodomy I, assault I, kidnapping -where there is serious physical injury or death, arson I - where there is serious physical injury or death, criminal attempt, criminal solicitation, or criminal conspiracy to commit any of the previously listed capital offenses or a Class A or Class B felony which involves serious physical injury or death of the victim:

Sentences of a number of years: Fifty (50) percent of the sentence received, or twelve (12) years, whichever is less. [As prescribed by statute]

Sentences of life: Twelve (12) years. [As prescribed by statute]

(b) A person confined to a state penal institution or county jail who has been convicted of a felony offense committed on or after December 3, 1980, but prior to the effective date of this administrative regulation, shall have his case reviewed by the board in accordance with the following schedule:

Sentence Being Served	Time Service Required Before First Review (Minus Jail Credit)
1 year, up to but not including 2 years	4 months
2 years, up to and including 39 years	20% of sentence received
More than 39 years, up to and including life	8 years

(c) A person confined to a state penal institution or county jail who has been convicted of a felony offense committed prior to December 3, 1980 shall have his case reviewed by the board in accordance with the following schedule:

Sentence Being Served	Time Service Required Before First Review (Minus Jail Credit)
1 year	4 months
More than 1 year and less than 18 months	5 months
18 months up to and including 2 years	6 months
More than 2 years and less than 2 1/2 years	7 months
2 1/2 years up to 3 years	8 months
3 years	10 months
More than 3 years, up to and including 9 years	1 year
More than 9 years, up to and	

including 15 years	2 years
More than 15 years, up to and including 21 years	4 years
More than 21 years, up to and including life	6 years

Parole eligibility on an individual serving multiple sentences, where one (1) or more of the crimes resulted in a conviction committed under paragraph [Section 4] (b) or (c) of this subsection or this paragraph [administrative regulation] and one (1) or more committed under paragraph (a) of this subsection [Section 4(a) of this administrative regulation], shall be calculated by applying the parole eligibility criteria in effect at the time the most recent crime was committed.

(d) After the initial review for parole, a subsequent review, during confinement, shall be at the discretion of the board; however, the maximum deferment given at one (1) time shall not exceed the statutory minimum parole eligibility for a life sentence. The board shall reserve the right to order a serve-out on a sentence.

(e)1. If a confined prisoner is sentenced for a felony committed prior to the date of his current incarceration and he has not been discharged since his original admission and, if this new conviction shall be served consecutively, the sentence received for the latter conviction shall be added to the sentence currently being served to determine his parole eligibility.

2. If a confined prisoner is a returned parole violator who receives an additional consecutive sentence, his parole eligibility shall be calculated on the length on the new sentence only, beginning from the date of his final sentencing.

3. If a confined prisoner receives an additional concurrent or consecutive sentence after he has been considered by the board, but not yet released if parole is recommended, the previous action of the board shall be automatically voided and the new parole eligibility shall be calculated from the date of original admission on the aggregate sentences. [If a confined prisoner is sentenced for a felony committed prior to the date of his instant commitment and this conviction shall be served consecutively, it shall be added to the sentence being served to determine eligibility for parole consideration if the inmate has not been discharged from the institution since his original admission on that institutional number. If the confined prisoner is a returned parole violator with an additional consecutive sentence, parole eligibility shall be determined on the length of the new sentence only, calculated from the date of final sentencing. If the confined prisoner is recommended for parole or given a serve-out or deferment and receives an additional concurrent or consecutive sentence, parole eligibility on the new sentence shall be calculated from the date of original admission on the aggregate sentences, total time to serve, and allowing jail credit on all sentences as if he has never been seen by the board. If the additional sentence shall be served concurrently, he shall start to accrue parole eligibility on the day he is committed on the first sentence.]

(f) If an inmate commits a crime while confined in an institution or while on an escape and receives a concurrent or consecutive sentence for this crime, eligibility time towards parole consideration on the latter sentence shall not begin to accrue until he becomes eligible for parole on his original sentence. This shall include a life sentence.

(g) In determining parole eligibility for an inmate who receives a sentence for an escape, a sentence for a crime committed while in the institution or on a sentence for a crime committed while on an escape, the total parole eligibility shall be calculated by adding the following, regardless of whether the sentences are ordered to run concurrently or consecutively:

1. The amount of time to be served for parole eligibility on the original sentence;

2. The amount of time to be served for parole eligibility on the additional sentence for the escape;

3. The amount of time to be served for parole eligibility on the time to be served for the crime committed while in the institution and escape; and

4. The amount of time to be served for parole eligibility on the time to be served for the crime committed while on escape.

(h) If a confined prisoner who has previously met the board is given a deferment, escapes during the period of the defer-

ment, and returns from that escape without a new sentence for the escape, the time out on the escape shall be added to the original deferment date to arrive at the new adjusted date. If the prisoner later receives a sentence for the escape the previous deferment shall be automatically voided and the new parole eligibility date shall be calculated based on the new sentence beginning from the date of sentencing for the new sentence. [If a person receives a concurrent or consecutive sentence for a crime committed while confined in the institution or while on escape from the institution, he shall not begin to accrue eligibility time towards parole consideration on the latter sentence until he becomes eligible for parole on the sentence for which he is originally confined. This shall include a life sentence.

(g) In determining parole eligibility for an inmate who receives a sentence for an escape, the board shall require, in addition to the amount of time to be served for parole eligibility on the original sentence, and for a crime committed while in the institution or on an escape, the service of additional time equal to the time to be served for an additional sentence received for the escape.

(h) If a confined prisoner receives a deferment, escapes before he meets the board again, returns to the institution from the escape but does not receive a new sentence for the escape, the time out on escape shall be added to the deferred date to arrive at his new adjusted deferment date. However, if he later receives a sentence for that escape, his time shall be calculated on the new sentence from the date of sentencing. A new escape sentence shall void the deferment.]

(i) If an inmate receives a serve-out or deferment on his original sentence prior to receiving an escape sentence or a sentence for a crime committed while on escape or confined in an institution, he shall automatically be brought before the board again when he becomes eligible for parole consideration on the additional sentence. His parole eligibility shall be calculated from the date of sentencing on the new sentence.

(j) If an inmate receives a parole recommendation but escapes prior to being released, the parole recommendation shall be rescinded by the board upon receipt of a signed affidavit attesting to the fact that the escape has occurred from the institutional parole officer of the institution where the inmate escaped. Upon return to a state institution, the inmate shall be placed before the board at its next regularly scheduled hearing at the institution where he is confined.

(k) If a person is shock probated and later returned as a shock probation violator, his new parole eligibility shall be calculated by adding the period of time the inmate is on shock probation to his original parole eligibility date.

(l) If a person on shock probation is returned to the institution with a new consecutive sentence acquired while on shock probation, he shall be eligible for a parole hearing if he has reached parole eligibility on the aggregate of the two (2) sentences. The time served toward parole eligibility prior to discharge by shock probation shall be included as part of the total period of time to be served for parole eligibility on the aggregate sentences. The time spent out on shock probation shall not be included as part of the total period of time to be served for parole eligibility. [A person who is shock probated and later returned as a shock probation violator shall be considered for parole after he serves the required time. This sentence shall be calculated by adding the period of time the inmate is out of the institution to his original parole eligibility date.

(m) A person returned to the institution as a shock probation violator with a new concurrent sentence shall have a separate date of parole eligibility on each sentence computed. The inmate shall have a separate hearing on each eligibility date. The adjusted parole eligibility date on the sentence for which he received shock probation shall be determined by adding the period of time he is out of the institution to his original parole eligibility date, calculated prior to being shock probated.

(n) A person who is shock probated and returned to the institution with a new sentence acquired while on shock probation to be served consecutively, shall be eligible for a parole hearing if he has served the amount of time to be eligible for a parole hearing on the aggregate of the two (2) sentences. The time served toward parole eligibility prior to discharge by shock probation shall be included as part of the total

VOLUME 25, NUMBER 1 – JULY 1, 1998

period of time to be served for parole eligibility on the aggregate sentences.]

(2) An inmate who has committed an offense on or after the effective date of this administrative regulation shall not be eligible for parole consideration prior to his minimum eligibility date, as determined pursuant to subsection (1) of this section [4(1) of this administrative regulation], unless he has:

(a) Successfully completed the First Incarceration Shock Treatment (FIST) Program implemented by CPP 21.2, V. Policy, B. Eligibility Criteria, incorporated by reference, in 501 KAR 6:020; and

(b) Not been convicted of an offense that resulted in serious physical injury.

(3) The parole hearing shall consist of an interview with the inmate by the board, or a panel. If the inmate is too ill to appear, the board may, at its discretion, appoint one (1) member to interview the inmate in the health care facility where he is confined and report back to the remaining members. A majority vote by a quorum shall be required before action is taken.

(4) If an inmate refuses to meet the board on his scheduled hearing date, a notarized statement to that effect shall be presented. A person refusing to meet the board may petition the board for reconsideration.

(5) An inmate who is psychologically unstable may be deferred in absentia until he is able to meet the board if the board receives documentation from a certified psychologist or psychiatrist.

(6) The board shall schedule the initial parole hearing as follows, unless otherwise prescribed by statute:

(a) For an institution that has hearings scheduled once per month, the inmate shall, if administratively possible, be seen during the month he is eligible for parole consideration.

(b) For an institution that has hearings scheduled bimonthly, the inmate shall, if administratively possible, be seen during the month eligible or one (1) month prior to the month he is eligible for parole consideration.

(c) If it is not administratively possible to conduct the initial parole hearing during the month the inmate is eligible, the inmate shall be seen at the next available board hearing conducted at the institution where the inmate is housed.

Section 3. [5:] Board Criteria for Granting or Denying Parole. (1) Before granting or denying parole, the board shall apply any of the following factors to an inmate:

(a) Current offense - seriousness, violence involved, firearm used;

(b) Prior record;

(c) Institutional adjustment and conduct - disciplinary reports, loss of good time, work and program involvement;

(d) Attitude toward authority - before and during incarceration;

(e) History of alcohol or drug involvement;

(f) History of prior probation, shock probation or parole violations;

(g) Education and job skills;

(h) Employment history;

(i) Emotional stability;

(j) Mental capacities;

(k) Terminal illness;

(l) History of deviant behavior;

(m) Official and community attitudes toward accepting inmate back in the county of conviction;

(n) Victim impact statement and victim impact hearing;

(o) Review of parole plan - housing, employment, need for community treatment and follow-up resources;

(p) Other factors involved that relate to the inmate's needs and public safety.

(2) The board may rescind a parole recommendation anytime prior to the release of an inmate on parole.

(3) The board may reconsider a decision to deny parole if the chair requests the full board to reconsider a decision and the full board votes in writing, and the majority votes in favor of the reconsideration hearing.

(4) An inmate whose parole is revoked, rescinded or denied by deferment or serve-out may request an appellate review by the board. A request for the review shall be received by the board within twenty-one (21) days from the date the final disposition is made available to the inmate. If the request is not received within twenty-one (21) days, it

shall be denied. The request shall be screened by a board member or his designee to decide if a review shall be conducted. A review shall be conducted for the following reasons:

(a) If there is significant new evidence that was not available at the time of the hearing. A request based on the availability of new evidence or information shall be accompanied by adequate documentation.

(b) If there is an allegation of misconduct by a board member that is substantiated by the record.

(c) If there is a significant procedural error by a board member. A request which requires further consideration shall be based on one (1) or more of the above reasons. A request based on an allegation of misconduct or significant procedural error shall clearly indicate the specific misconduct or procedural error. If the case is set for review, it shall be conducted from the record of the first hearing. The appearance of the inmate shall not be necessary. If a board member wishes to have additional testimony, an appearance hearing may be conducted. The board shall vote after reviewing the initial taped interview and the record. A decision to change the result of the hearing that is the subject of the appeal shall require the concurrence of four (4) board members. This decision shall be final.

Section 4. [6:] Youthful Offender. (1) A youthful offender shall be subject to the jurisdiction of the board as described in KRS 640.080.

(2) The Cabinet for Human Resources and the Department of Corrections shall provide the board with necessary records to conduct a hearing as described in KRS 640.100.

(3) A youthful offender shall be subject to the board's applicable administrative regulations.

(4) A youthful offender housed by the Cabinet for Human Resources shall have a hearing at a site agreed upon by that cabinet and the board.

(5) A youthful offender housed by the Department of Corrections shall have a hearing at a site determined by the board.

(6) An administrative law judge shall hold a preliminary revocation hearing at a facility out of sight and sound of adult inmates.

(7) A final revocation hearing for a youthful offender shall be held at a site agreed upon by the Cabinet for Human Resources and the board or the central office of the board.

(8) Special hearings for a youthful offender shall be held in central office.

Section 5. [7:] Conditions of Parole. (1) [The general conditions are as follows:] The parolee shall:

(a) Report to his parole officer immediately upon arrival at his destination and submit in writing once a month, or more if directed by the officer, a report on forms prescribed by the Division of Probation and Parole.

(b) Permit his parole officer to visit his home and place of employment at any time.

(c) Not indulge in the use of a nonprescribed controlled substance.

(d) Work regularly and support his legal dependents. If unemployed, he shall report this fact to his officer and make every attempt to obtain other employment.

(e) Not associate with a convicted felon except for a legitimate purpose, including family, residential, occupational or treatment.

(f) Not visit with an inmate of a penal institution without permission of his parole officer.

(g) Not leave the state, district, residence or place of employment without written permission of his parole officer.

(h) Not be permitted to purchase, own or have in his possession a firearm or other weapon.

(i) Not violate any law or city ordinance of this state, any other state or the United States.

(j) Not falsify any report to his parole officer.

(k) Not have the right to register for voting purposes and may not hold office; if he registers or reregisters prior to restoration of his civil rights, he shall be in violation of the law which carries a maximum penalty of five (5) years in prison.

(l) Comply with the conditions of supervision [rules] and administrative regulations prescribed by the Division of Probation and Parole and special instructions of his parole officer.

(m) Pay a supervision fee unless expressly waived by the board.

VOLUME 25, NUMBER 1 – JULY 1, 1998

(2) If additional supervision or conditions are deemed necessary in a case, the board may order a parolee to:

(a) Be placed in the Intensive Supervision Program, administered by the Department of Corrections, pursuant to 501 KAR 6:020 and CPP 27-11-01;

(b) Observe a curfew;

(c) Not associate with, or contact a specific individual;

(d) Not frequent a certain place or business;

(e) Be tested periodically for drugs; or

(f) Observe any condition the board has determined is necessary for the rehabilitation of the parolee. [KRS 439.340 requires the Kentucky Parole Board to adopt administrative regulations with respect to eligibility of prisoners for parole. This administrative regulation establishes the criteria for determining parole eligibility.

Section 1. Definitions. As used in these administrative regulations, unless the content otherwise requires:

(1) "Board" means the Kentucky Parole Board or a quorum thereof.

(2) "Quorum" means the number of members of any body who must necessarily be present in order for the body to transact business.

(3) "Panel" means anything less than a quorum.

(4) "Chair" means the Chairman of the Kentucky Parole Board.

(5) "Detainer" means a document issued or made by a legal authority, authorizing the keeper of a prison/jail to keep in his custody the person named in the document.

(6) "Serve-out" means a decision of the board that an inmate shall serve until the completion of his sentence (SOT - serve-out time).

(7) "Deferment" means a decision of the board that an inmate shall serve a specific number of months before further parole consideration.

(8) "Reconsideration" means a decision to review a previous board action.

(9) "Parole recommendation" means a decision of the board that an inmate may be released from incarceration prior to the expiration of his sentence if the inmate has an approved parole plan and if the inmate has signed his parole certificate.

(10) "Parole" means the release of an inmate with a signed parole certificate to the community prior to the expiration of his sentence, subject to conditions imposed by the board and subject to its supervision. Where a court or other authority has issued a detainer against the inmate, the board, in its discretion, may release him to answer the detainer of such court or authority.

(11) "Parole rescission" means a decision of the board to terminate or rescind an inmate's parole recommendation, before such inmate means actually released on parole.

(12) "Parole revocation" means the formal procedure by which the board may terminate or revoke a parolee's release on parole.

(13) "Preliminary hearing" means the initial hearing conducted by an administrative law judge to determine whether probable cause exists to believe a parolee has violated the conditions of his parole.

(14) "Youthful offender" means a juvenile declared as such as described in KRS 640.010.

Section 2. Statement of Content. (1) It is the intent of the Kentucky General Assembly in creating the Kentucky Parole Board that it be autonomous and in all respects functionally and administratively separate from any other state agency, except as provided in KRS 439.320(1). Consequently, the board shall protect such necessary freedom from real or apparent political control, manipulation, or undue or improper influence by any person, group, or other entity of any kind.

(2) All decisions of the board regarding policy, procedures and its actions in parole matters shall be determined by simple majority vote of the members of the board, except as provided in KRS 439.320(2). Panels of the board may make recommendations to the full board where authorized.

Section 3. Administration. (1) Board structure. The composition of the board shall be as provided by law. The appointment of members of the board, the selection of its chair, and the quorum requirements shall be those as specified by law.

(2) Information concerning the board.

(a) The board shall provide and disseminate written information concerning the functions of the Kentucky Parole Board.

(b) The board shall maintain close communication and cooperation with the Justice Cabinet and the Department of Corrections, the Governor and his staff, members and committees of the General Assembly, and other public officials, including judges, state attorney general, Commonwealth Attorney, law enforcement officials and public defenders. The board shall communicate and cooperate with all public and private service agencies, including, but not limited to, agencies dealing with mental health, vocational rehabilitation, legal aid, human services and victims of crime.

(c) Since the board has the authority to grant parole, it welcomes the opinion of the sentencing judge, prosecuting attorney, other public officials, and private citizens, including victims of crime, concerning parole consideration.

Section 4. Parole Eligibility. (1) Initial parole review date.

(a) All persons confined to a state penal institution or county jail who have been convicted of a felony offense committed after the effective date of this administrative regulation shall have their cases reviewed by the board (unless otherwise prohibited by statute) in accordance with the schedule set out as follows:

Sentence Being Served	Time Service Required Before First Review (Minus Jail Credit)
1 year, up to but not including 2 years	4 months
2 years, up to and including 39 years	20% of sentence received
More than 39 years, up to & including life	8 years
Persistent felony offender in conjunction with a Class A, B, or C felony	10 years

For the crimes, committed on or after July 15, 1986, of murder, manslaughter I, rape I, sodomy I, assault I, kidnapping (where there is serious physical injury or death), arson I (where there is serious physical injury or death), criminal attempt, criminal solicitation, or criminal conspiracy to commit any of the previously listed capital offenses or Class A felonies which involve serious physical injury or death of the victim:

Sentences of a number of years: As prescribed by statute

Sentences of life: As prescribed by statute

(b) All persons confined to a state penal institution or county jail who have been convicted of a felony offense committed on or after December 3, 1980 but prior to the effective date of this administrative regulation shall have their cases reviewed by the board in accordance with the schedule set out as follows:

Sentence Being Served	Time Service Required Before First Review (Minus Jail Credit)
1 year, up to but not including 2 years	4 months
2 years, up to and including 39 years	20% of sentence received
More than 39 years, up to and including life	8 years

(c) All persons confined to a state penal institution or county jail who have been convicted of a felony offense committed prior to December 3, 1980 shall have their cases reviewed by the board in accordance with the schedule set out as follows:

Sentence Being Served	Time Service Required Before First Review (Minus Jail Credit)
1 year	4 months
More than 1 year and less than 18 months	5 months

VOLUME 25, NUMBER 1 – JULY 1, 1998

18 months up to and including 2 years	6 months
More than 2 years and less than 2 1/2 years	7 months
2 1/2 years up to 3 years	8 months
3 years	10 months
More than 3 years, up to & including 9 years	1 year
More than 9 years, up to & including 15 years	2 years
More than 15 years, up to & including 21 years	4 years
More than 21 years, up to & including life	6 years

Parole eligibility on those individuals serving multiple sentences, one (1) or more of the crimes which resulted in the convictions committed under Section 4(b) or (c) of this administrative regulation and one (1) or more committed under Section 4(a) of this administrative regulation, shall be calculated by applying the parole eligibility criteria in effect at the time the most recent crime was committed.

(d) After the initial review for parole, subsequent review, so long as confinement continues, shall be at the discretion of the board; except maximum deferment given at any one (1) time shall not exceed the minimum parole eligibility for a life sentence as established by statute. The board reserves the right to order a serve-out on any sentence.

(e) A sentence on conviction of a felony imposed upon a confined prisoner for a crime committed prior to the date of his instant commitment, if designated to be served consecutively, shall be added to the sentence being served to determine eligibility for parole consideration if the inmate has not been discharged from the institution since his original admission on that institutional number. If the confined prisoner is a returned parole violator with an additional consecutive sentence then parole eligibility shall be determined on the length of the new sentence only, calculated from the date of final sentencing. If the confined prisoner has been recommended for parole or given a serve-out or deferment and receives an additional sentence, running either concurrently or consecutively, parole eligibility on the new sentence shall be calculated from the date of original admission on the aggregate sentences (total time to serve) and allowing jail credit on all sentences, as if he had never been seen by the board. If the additional sentence is designated to be served concurrently, he shall be considered as having started to accrue parole eligibility on the day he was committed on the first sentence.

(f) A person receiving a concurrent or consecutive sentence for crime committed while confined in the institution or while on escape from the institution shall not begin accruing eligibility time towards parole consideration on the latter sentence until he has become eligible for parole on the sentence, including a life sentence, for which he was originally confined.

(g) In determining parole eligibility for an inmate who has received a sentence for an escape, the board shall require, in addition to the amount of time to be served for parole eligibility on the original sentence, and the time required to be served for any crime committed while in the institution or while on escape, the service of additional time equal to the time to be served for any additional sentence received for such escape.

(h) If a confined prisoner receives a deferment, escapes before he meets the board next time, returns to the institution from escape but does not have a new sentence for escape, the time out on escape shall be added to the deferred date to arrive at his new adjusted deferment date. However, if he later receives an escape sentence for that escape, his time shall be calculated on the new sentence from the date of sentencing. A new escape sentence shall void the deferment.

(i) Even though an inmate has received a serve-out or deferment on his original sentence prior to receiving an escape sentence or a sentence or sentences for crimes committed while on escape or while confined in the institution, he shall automatically be brought before the board again when, and not until, he becomes eligible for parole consideration on the additional sentence(s) and the parole eligibility shall be calculated from the date of sentencing on the new sentence or sentences.

(j) If an inmate has received a parole recommendation but escapes prior to being released on parole, the parole recommendation shall be rescinded by the board upon receipt of an affidavit signed and submitted by the institutional parole officer of the institution from where

the inmate escaped attesting to the fact that the escape has occurred. Upon return to a state institution, the inmate shall be placed back before the board at its next regularly scheduled hearing at the institution where he is confined.

(k) A person who is shock probated and later returned as a shock probation violator shall be considered for parole after he has served the required time on the sentence calculated by adding on the period of time the inmate was out of the institution to his original parole eligibility date.

(l) Persons returned to the institution as a shock probation violator with a new concurrent sentence shall have separate dates of parole eligibility on each sentence computed and the inmate shall be heard separately on each eligibility date. The adjusted parole eligibility date on the sentence on which he was shock probated shall be determined by adding the period of time he was out of the institution to his original parole eligibility date calculated prior to being shock probated.

(m) A person who is shock probated and later returned to the institution with a new sentence acquired while on shock probation and ordered to be served consecutively shall be eligible for a parole hearing when he has served the amount of time required to be eligible for a parole hearing required on the aggregate of the two (2) sentences. The time served toward parole eligibility prior to discharge by shock probation shall be included as part of the total period of time to be served for parole eligibility on the aggregate sentences.

(2) In keeping with the intent of the Act, the Parole Board may with the consent of the majority of the board review the case of any inmate for parole consideration prior to his eligibility date. This shall not be done until the reason for such action is submitted to all members in writing, along with all supporting documents, and all members shall note in writing as to their desire to grant a hearing. This shall then be filed in the record of the inmate in question and made a permanent part of his file in the central office of the Department of Corrections.

(3) The parole hearing shall consist of an interview with the inmate by the board, or a panel. In instances when the inmate is too ill to appear before the board, the board may, at its discretion, appoint one (1) member to interview the inmate in the health care facility where he is confined and report back to the remaining members. In this instance, as in all cases, a majority vote by a quorum is required before action is taken.

(4) If an inmate refuses to meet the board on his scheduled hearing date, a notarized statement shall be presented to this effect. A person refusing to meet the board may petition the board for reconsideration.

(5) Inmates who are psychologically unstable may be deferred in absentia until they are able to meet the board if the board receives documentation from a certified psychologist or psychiatrist.

(6) The board shall schedule the initial parole hearing as follows (unless otherwise prescribed by statute):

(a) For those institutions that have hearings scheduled once per month, the inmates shall be seen during the month they are eligible for parole consideration, if administratively possible.

(b) For those institutions that have hearings scheduled bimonthly, the inmates shall be seen during the month eligible or one (1) month prior to the month they are eligible for parole consideration, if administratively possible.

(c) In those instances where it is not administratively possible to conduct the initial parole hearing during the month the inmate is eligible for a parole hearing, the inmate shall be seen at the next available board hearing conducted at the institution where the inmate is housed.

Section 5. Board Criteria for Granting or Denying Parole. (1) Before granting or denying parole, the board shall apply any or all of the following factors to each inmate:

- (a) Current offense—seriousness, violence involved, firearm used;
- (b) Prior record;
- (c) Institutional adjustment and conduct—disciplinary reports, loss of good time, work and program involvement;
- (d) Attitude toward authority—before incarceration, during incarceration;
- (e) History of alcohol or drug involvement;
- (f) History of prior probation, shock probation or parole violations;
- (g) Education and job skills;
- (h) Employment history;

- (i) Emotional stability;
- (j) Mental capacities;
- (k) Terminal illness;
- (l) History of deviant behavior;
- (m) Official and community attitudes toward accepting inmate back in the county of conviction;
- (n) Victim impact statements and victim impact hearings;
- (o) Review of parole plan – housing, employment, need for community treatment and follow-up resources;
- (p) Any other factors involved that would relate to the inmate's needs and the safety of the public.

(2) The board may rescind a parole recommendation anytime prior to the release of an inmate on parole.

(3) The board may reconsider a decision to deny parole if the chairman requests the full board to reconsider a decision and the full board votes in writing, and the majority votes in favor of the reconsideration hearing.

(4) An inmate whose parole has been revoked, rescinded or denied by deferment or serve out may request an appellate review by the board. Requests for an appellate review shall be received by the board within twenty-one (21) days from the date the final disposition is made available to the inmate. If the request is not received within twenty-one (21) days, it shall be denied. The request shall be screened by a board member or designee to decide if a review shall be conducted. Reviews shall be conducted for the following reasons:

(a) If there is significant new evidence that was not available at the time of the hearing;

(b) If there are allegations of misconduct by a board member that are substantiated by the record;

(c) If there were significant procedural errors by a board member.

All requests which will receive further consideration shall be based on one (1) or more of the above reasons. Requests based on the availability of new evidence or information shall be accompanied by adequate documentation. Requests based on allegations of misconduct or significant procedural errors shall clearly indicate the specific misconduct or procedural errors(s).

If the case is set for review, it shall be conducted from the record of the first hearing and the appearance of the inmate shall not be necessary. If a board member wishes to have additional testimony, an appearance hearing may be conducted. The board shall vote after reviewing the initial taped interview and the record. A decision to change the result of the hearing that is the subject of the appeal shall require the concurrence of four (4) board members. The decision rendered after an appellate review is final.

Section 6. Youthful Offender. (1) Youthful offenders are subject to the jurisdiction of the Kentucky Parole Board as described in KRS 640.080.

(2) The Cabinet for Human Resources and the Department of Corrections shall provide the Parole Board with all necessary records to conduct a hearing as described in KRS 640.100.

(3) Youthful offenders shall be subject to all sections of the Kentucky Parole Board administrative regulations as applicable.

(4) Youthful offenders housed by the Cabinet for Human Resources shall have a hearing at a site agreed upon by that cabinet and the Parole Board.

(5) All youthful offenders housed by the Department of Corrections shall have a hearing at a site determined by the Parole Board.

(6) Administrative law judges shall hold preliminary revocation hearings at facilities out of sight and sound of adult inmates.

(7) Final revocation hearings for youthful offenders shall be held at a site agreed upon by the Cabinet for Human Resources and the Kentucky Parole Board or the Central Office of the Parole Board.

(8) Special hearings for youthful offenders shall be held in central office.

Section 7. Conditions of Parole. (1) The general conditions are as follows:

(a) The parolee shall report to his parole officer immediately upon arrival at his destination and submit in writing once a month, or more often if directed by the officer, a report on forms prescribed by the Division of Probation and Parole.

(b) The parolee shall permit his parole officer to visit his home and place of employment at any time.

(c) The parolee shall not indulge in the use of nonprescribed controlled substances.

(d) The parolee shall work regularly and support his legal dependents. When unemployed, he shall report this fact to his officer and make every attempt to obtain other employment.

(e) The parolee shall not associate with a convicted felon except for legitimate purposes, including but not limited to family, residential, occupational or treatment purposes.

(f) The parolee shall not visit with inmates of penal institutions without permission of his parole officer.

(g) The parolee shall not leave the state, district, residence or place of employment without written permission of his parole officer.

(h) The parolee shall not be permitted to purchase, own or have in his possession a firearm or other weapon.

(i) The parolee shall not violate any law or city ordinance of this state or any other state or of the United States.

(j) The parolee shall not falsify any report to his parole officer including his monthly report.

(k) The parolee does not have the right to register for voting purposes and cannot hold office; should he register or reregister prior to restoration of civil rights, he shall be in violation of the law which carries a maximum penalty of five (5) years in prison.

(l) The parolee shall comply with all rules and administrative regulations prescribed by the Division of Probation and Parole and special instructions of his parole officer.

(m) The parolee shall pay a supervision fee unless expressly waived by the Parole Board.

(2) Special conditions of parole may be added in individual cases at the discretion of the Parole Board.]

LINDA F. FRANK, Chair

TAMELA BIGGS, Staff Attorney

JACK DAMRON, Staff Attorney

APPROVED BY AGENCY: March 9, 1998

FILED WITH LRC: March 12, 1998 at 4 p.m.

EDUCATION, ARTS, AND HUMANITIES CABINET

Kentucky Board of Education

Office of Chief State School Officer

(As Amended at ARRS, June 9, 1998)

701 KAR 5:110. Use of local monies to reduce unmet technology need.

RELATES TO: KRS 156.670, 157.650, 157.655, 157.660, 157.665, 160.160

STATUTORY AUTHORITY: KRS 156.070, 156.160

NECESSITY, FUNCTION, AND CONFORMITY: KRS 156.160(1)(b) requires [that] the Kentucky Board of Education to promulgate administrative regulations governing the acquisition and use of educational equipment for the schools as recommended by the Council for Education Technology. KRS 156.670(1) requires the development of the master plan for education technology to outline Commonwealth activities related to the purchase, development, and use of technology. The master plan requires a district [districts] to submit a district technology plan [plans] which describes its [describe their] unmet technology need. KRS 157.655 stipulates that a local public school district may participate in the education technology funding program based on the unmet technology need described in the local district plan and approved by the state board. Based on review of the unmet technology need in district technology plans, it has been determined that full implementation of KETS cannot be funded based solely on offers of assistance from the Education Technology Trust Fund. Therefore, this administrative regulation is promulgated to ensure that all school district technology procurements, in categories for which KETS standards for unmet need have been established, will reduce the unmet technology need regardless of source of funds.

VOLUME 25, NUMBER 1 – JULY 1, 1998

Section 1. Definitions. ~~[As used in this administrative regulation, unless the context requires otherwise:]~~ (1) "Department" means the Kentucky Department of Education.

(2) "District technology plan" means the plan developed by the local school district and the Department of Education and approved by the Kentucky Board of Education.

(3) "Kentucky Education Technology System" or "KETS" means the statewide system set forth in the technology master plan issued by the Kentucky Board of Education with the recommendation of the Council for Education Technology and approved by the Legislative Research Commission.

(4) "Master plan" means the long-range plan for the implementation of the Kentucky Education Technology System as developed by the Council on Education Technology and approved by the Kentucky Board of Education and the Legislative Research Commission.

(5) "Unmet technology need" means the total cost of technology, meeting or exceeding the criteria established in the master plan, needed to achieve the capabilities outlined in the approved technology plan of the local school district.

Section 2. Determination of Unmet Need. A local school district shall determine its unmet technology need as part of the technology planning process. Unmet technology need shall be audited by the department and subject to the approval of the Kentucky Board of Education as part of the state review and assistance calculation process, as provided by the master plan.

Section 3. Reducing Unmet Need. (1) In categories of unmet technology need, as provided in the KETS Master Plan for Education Technology, a district [districts] shall limit procurements to those which will reduce unmet technology need until the district's unmet technology need no longer exists.

(2) To assist a district in selecting technology which will reduce the unmet technology need, the Department of Education shall develop suggested procurement guidelines for equipment, software, and services.

Section 4. Alternative Technology. A local school district [districts] shall not be precluded from proposing alternative technologies in the local technology plan, particularly if [when] the technology is proposed to achieve innovation.

Section 5. Incorporation by Reference. (1) The KETS Master Plan for Education Technology, dated February, 1998 [October 4, 1995], is hereby incorporated by reference.

(2) It [and] may be obtained from the Office of Education Technology, First Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky, Monday through Friday, 8 a.m. through 4:30 p.m.

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the Kentucky Board of Education, as required by KRS 156.070(4).

WILMER S. CODY, Commissioner of Education

JOSEPH W. KELLY, Chairman

KEVIN M. NOLAND, Attorney

APPROVED BY AGENCY: April 14, 1998

FILED WITH LRC: April 15, 1998 at 10 a.m.

EDUCATION, ARTS, AND HUMANITIES CABINET
Education Professional Standards Board
(As Amended at ARRS, June 9, 1998)

704 KAR 20:082. Probationary certificate for teachers of children, birth to primary.

RELATES TO: KRS 157.3175, 161.020, 161.030

STATUTORY AUTHORITY: KRS 161.028

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.020 requires that a teacher and other professional school personnel hold a certificate of legal qualification for their respective position to be issued

upon completion of a program of preparation prescribed by the Education Professional Standards Board; furthermore, a teacher education institution is required to be approved for offering the preparation program corresponding to a particular certificate on the basis of standards and procedures adopted by the Education Professional Standards Board. This administrative regulation establishes a plan for recruiting certified classroom teachers into positions for teachers of children ages birth to primary age.

Section 1. Definition. "Qualified[?]" teacher" means a teacher who holds an interdisciplinary early childhood education certificate or who has received an approval identified in 704 KAR 20:084, Section 5.

Section 2. If a qualified teacher is not available for the position as teacher of children birth to primary age, as attested by the local school superintendent, the superintendent, on behalf of the local board of education, may request a one (1) year probationary recruitment certificate be issued as provided in this administrative regulation.

(1) A prerequisite for a one (1) year probationary certificate for teaching children, birth to primary age, shall be:

(a) A certificate or statement of eligibility in kindergarten or elementary special education; or

(b) A baccalaureate or advanced degree in early childhood education, early childhood special education, or child development.

(2) The applicant shall have:

(a) Enrolled in a preparation program in interdisciplinary early childhood education; and

(b) [shall have] Completed a minimum of nine (9) semester hours of credit in the development of children below primary age or in special education.

(3) The applicant shall complete twelve (12) clock hours of training as required by the Division of Preschool Programs prior to employment.

(4) The applicant shall complete an additional six (6) clock hours of training required by the Division of Preschool Programs within the first three (3) months of employment.

Section 3. The renewal of the one (1) year probationary certificate for teachers of children birth to primary age shall require recommendation by the approved preparation program that the candidate has made significant progress toward the completion of the interdisciplinary early childhood education certificate, as measured by the teaching standards established [identified] in 704 KAR 20:084.

Section 4. Upon recommendation of an approved teacher education institution, teaching experience performed in a full-time position requiring certification for teachers of children birth to primary age shall be substituted for the student teaching requirement.

Section 5. An applicant holding a classroom teaching certificate who is recruited into a position for teachers of children birth to primary age under this administrative regulation shall complete the assessment requirements established [identified] in 704 KAR 20:084 for interdisciplinary early childhood education.

ROSA WEAVER, Chair

ROBERT S. SHERMAN, General Counsel

APPROVED BY AGENCY: January 27, 1998

FILED WITH LRC: March 18, 1998 at 3 p.m.

EDUCATION, ARTS, AND HUMANITIES CABINET
Education Professional Standards Board
(As Amended at ARRS, June 9, 1998)

704 KAR 20:670. Kentucky teaching certificates.

RELATES TO: KRS 158.6451, 161.020, 161.028, 161.030

STATUTORY AUTHORITY: KRS 161.028, 161.030

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.020

requires that a teacher and other professional school personnel hold a certificate of legal qualifications for the respective position to be issued upon completion of a program of preparation prescribed by the Edu-

VOLUME 25, NUMBER 1 – JULY 1, 1998

cation Professional Standards Board. Additionally, KRS 161.028, requires 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. This administrative regulation establishes the Kentucky certification to be issued for classroom teaching positions and the new teacher standards for preparation and certification.

Section 1. Definitions. (1) "Approved program of preparation" means a program which has been approved by the Education Professional Standards Board for a specific certification or which has been approved for certification by the state education agency of another state.

(2) "Assessments" means the tests of knowledge and skills authorized by KRS 161.030.

(3) "Beginning teacher internship" means one (1) year of supervision, assistance, and assessment required by KRS 161.030.

(4) "Experienced teacher standards" means the standards established in 704 KAR 20:021 that identify what an effective experienced teacher shall know and do.

(5) "New teacher standards for preparation and certification" means the standards that describe what a first-year teacher shall know and be able to do in an authentic teaching situation.

(6) "Professional teaching certificate" means the document issued to an individual upon successful completion of the beginning teacher internship and to an applicant for whom the testing and internship requirement is waived under KRS 161.030 based on preparation and experience completed outside Kentucky.

(7) "Provision teaching certificate" means the document issued to an individual for the duration of the beginning teacher internship program.

(8) "Statement of eligibility" means the document issued to an applicant upon completion of an approved program of preparation and successful completion of the assessments.

Section 2. Certificate Issuance. (1) A statement of eligibility for a provisional teaching certificate shall be issued to an applicant who has successfully completed:

- (a) 1. A bachelor's degree; or
2. As required by Section 4(7)(e) and (8)(e) of this administrative regulation, a master's degree;
- (b) An approved program of preparation; and
- (c) The assessments corresponding to the certificate identified in Section 4 of this administrative regulation for which application is being made.

(2) Upon confirmation of employment in an assignment for the grade level and specialization identified on a valid statement of eligibility, a Provisional Teaching Certificate shall be issued for the duration of the beginning teacher internship established under KRS 161.030.

(3) Upon successful completion of the internship, a Professional Teaching Certificate shall be issued, valid for a four (4) year period.

Section 3. Certificate Renewal. (1) The renewal shall require completion of a fifth-year program of preparation which is consistent with:

(a) The experienced teacher standards established in 704 KAR 20:021; or

(b) The [with] standards adopted by the Education Professional Standards Board for a particular professional education specialty and established in an applicable administrative regulation [as defined in 704 KAR 20:021].

(2) The first five (5) year renewal shall require:

(a) Completion of a minimum of fifteen (15) semester hours of graduate credit applicable to the fifth-year program as defined in 704 KAR 20:021 by September 1 of the year of expiration; or

(b) Completion of the professional development plan defined in 704 KAR 20:022, Section 4(2).

(3) The second five (5) year renewal shall require:

(a) Completion of the fifth-year program as defined in 704 KAR 20:021 by September 1 of the year of expiration; or

(b) Completion of the professional development plan defined in 704 KAR 20:022, Section 4(1).

(4) Each subsequent five (5) year renewal shall require:

(a) Completion of three (3) years of successful teaching experience with continuing growth as documented in a portfolio; or

(b) Completion of at least six (6) semester hours of graduate credit related to the profession of teaching by September 1 of the year of expiration.

Section 4. Grade Levels and Specializations. Preparation for a certificate shall ensure that a teacher has the knowledge and skills for the instruction of all children including an intellectually gifted and talented child or a child with a disability; is proficient in the use of technology and in the instruction for multiage and multiability grouping; and has the knowledge and skills to implement the goals for the schools of the Commonwealth specified in KRS 158.6451. A teaching certificate shall be issued specifying one (1) or more of the following grade level and specialization authorizations:

(1) Interdisciplinary early childhood education, birth to primary, 704 KAR 20:084;

(2) Elementary school: primary through grade five (5) to include preparation in the academic disciplines taught in the elementary school;

(3)(a) Middle school: grades five (5) through nine (9) with two (2) middle school teaching fields to be selected from:

1. English and communications;
2. Mathematics;
3. Science; or
4. Social studies;

(b) Candidates who choose to simultaneously prepare for teaching in the middle school and for teaching exceptional children as provided in subsection (7) of this section shall be required to complete one (1) middle school teaching field;

(4) Secondary school: grades eight (8) through twelve (12) with one (1) or more of the following specializations:

- (a) English;
- (b) Mathematics;
- (c) Social studies;
- (d) Biological science; or
- (e) Physical science;
- (5) Grades five (5) through twelve (12) with one (1) or more of the following specializations:

(a) Agriculture;

(b) Business and marketing education;

(c) Family consumer science [Home economics]; or

(d) Industrial technology;

(6) All grade levels with one (1) or more of the following special-

- ties:
- (a) Art;
- (b) A foreign language;
- (c) Health;
- (d) Physical education;
- (e) Music; or
- (f) School media librarian;

(7) Grades primary through twelve (12) for teaching exceptional children and for collaborating with teachers to design and deliver programs for preprimary children, for one (1) or more of the following disabilities:

- (a) Learning and behavior disorders;
- (b) Moderate and severe disabilities, 704 KAR 20:251;
- (c) Teacher of deaf and hard of hearing;
- (d) Visually impaired; or
- (e) Communication disorders, valid at all grade levels for the instruction of exceptional children and youth with communication disorders, and requires a master's degree in communication;
- (8) Endorsements to certificates identified in subsections (1) through (7) of this section, valid for all grade levels, for the following:
- (a) Computer science;
- (b) English as second language;
- (c) Gifted education;
- (d) Driver education; or
- (e) Reading and writing and requires a master's degree in reading.

Section 5. Additional Certification. A candidate who holds a certificate valid for classroom teaching shall qualify for additional certification upon:

VOLUME 25, NUMBER 1 – JULY 1, 1998

(1) The recommendation of an approved institution of higher education, which shall include consideration of the performance standards; and

(2) The successful completion of each required Education Professional Standards Board assessment applicable to the additional certification being sought.

Section 6. New Teacher Standards for Preparation and Certification. The approved program of preparation for each certification shall be designed to address the student academic expectations as provided by 703 KAR 4:060; to meet the content standards provided by 704 KAR 20:696; to prepare a candidate to teach children, including a child from a culturally diverse background, and manage tasks identified in the following teacher performance standards:

(1) New Teacher Standard I, designs and plans instruction. The teacher designs and plans instruction and learning climates that develop student abilities to use communication skills, apply core concepts, become self-sufficient individuals, become responsible team members, think and solve problems, and integrate knowledge;

(2) New Teacher Standard II, creates and maintains learning climates. The teacher creates a learning climate that supports the development of student abilities to use communication skills, apply core concepts, become self-sufficient individuals, become responsible team members, think and solve problems, and integrate knowledge;

(3) New Teacher Standard III, implements and manages instruction. The teacher introduces, implements, and manages instruction that develops student abilities to use communication skills, apply core concepts, become self-sufficient individuals, become responsible team members, think and solve problems, and integrate knowledge;

(4) New Teacher Standard IV, assesses and communicates learning results. The teacher assesses learning and communicates results to students and others with respect to student abilities to use communication skills, apply core concepts, become self-sufficient individuals, become responsible team members, think and solve problems, and integrate knowledge;

(5) New Teacher Standard V, reflects and evaluates teaching and learning. The teacher reflects on and evaluates specific teaching and learning situations and programs;

(6) New Teacher Standard VI, collaborates with colleagues, parents, and others. The teacher collaborates with colleagues, parents, and other community agencies to design, implement, and support learning programs that develop student abilities to use communication skills, apply core concepts, become self-sufficient individuals, become responsible team members, think and solve problems, and integrate knowledge;

(7) New Teacher Standard VII, engages in professional development. The teacher evaluates his overall performance with respect to modeling and teaching Kentucky's learning goals established in KRS 158.6451, refines the skills and processes necessary, and implements a professional development plan; and

(8) New Teacher Standard VIII, content knowledge. The teacher demonstrates a current and sufficient academic knowledge of certified content areas to develop student knowledge and performance in those areas.

Section 7. Effective Dates. (1) The provisions for the issuance of a teaching certificate for each grade level and for each specialization identified in this administrative regulation shall become effective for all students admitted to the specific program of preparation beginning January 1, 1998.

(2) A candidate admitted prior to January 1, 1998, under one (1) or more of the following administrative regulations shall complete the program by September 1, 2000: 704 KAR 20:057, 20:070, [20:075; 20:076; 20:078;] 20:080, 20:095, 20:105, 20:115, 20:135, 20:145, 20:146, 20:159, 20:160, 20:161, 20:175, 20:180, 20:229, 20:230, 20:235, 20:255, 20:275, 20:280, 20:290, 20:340, 20:500, 20:520, and 20:570.

(3) A candidate who fails to complete the program by September 1, 2000, and does not apply for the certification by January 1, 2001 shall be required to qualify for the certification identified in this administrative regulation.

(4) A candidate admitted to an advanced level preparation program prior to September 1, 1998, shall:

(a) Complete the program by September 1, 2003; and
(b) [shall] Apply for the certification by January 1, 2004.

(5) The Education Professional Standards Board shall communicate to the Kentucky a college or university approved for these programs the effective date for admission to each new program identified in this administrative regulation and the date by which a candidate shall complete the former program. Colleges and universities shall take adequate steps to inform a candidate in the program regarding the deadline dates.

ROSA WEAVER, Chair

ROBERT S. SHERMAN, General Counsel

APPROVED BY AGENCY: November 18, 1997

FILED WITH LRC: March 18, 1998 at 3 p.m.

WORKFORCE DEVELOPMENT CABINET Department of Vocational Rehabilitation (As Amended at ARRS, June 9, 1998)

781 KAR 1:020. General provisions for operation of the Department of Vocational Rehabilitation.

RELATES TO: KRS 151B.190, 29 USC 706(8)(A)

STATUTORY AUTHORITY: KRS 151B.185, 151B.195

NECESSITY, FUNCTION, AND CONFORMITY: KRS 151B.200 accepts and agrees to comply with federal vocational rehabilitation acts, provides for a state rehabilitation agency and sets eligibility criteria for vocational rehabilitation services. KRS 151B.195 directs the Commissioner, Department of Vocational Rehabilitation to promulgate administrative regulations governing services, personnel, and administration of the state rehabilitation agency. This administrative regulation prescribes general criteria for the provision of rehabilitation services and is necessary in order to distribute limited funds available for that purpose. The general criteria in this administrative regulation set forth the regulatory policies.

Section 1. Definitions. (1) "Applicant" means an individual who has signed a letter or document requesting vocational rehabilitation services and who is available to complete an assessment. "Client" means an individual who has been determined by an appropriate state unit staff member to meet the basic conditions of eligibility for vocational rehabilitation services as defined in 34 CFR 361.31(b), which is adopted without change.]

(2) ["Applicant" means an individual who has signed a letter or document requesting vocational rehabilitation services and for whom the following minimum information has been furnished: name and address, disability, age and sex, date of referral, and source of referral.

(3) "Agency" or "Department" means the Department of Vocational Rehabilitation, and its appropriate staff members who are authorized under state law to perform the functions of the state regarding the state plan and its supplement.

(3) "Eligible individual" means an individual with a disability who has been determined by an appropriate department staff member to meet the basic conditions of eligibility for vocational rehabilitation services as defined in 34 CFR 361.42.

(4) "Legally blind" means an individual has a visual acuity of 20/200 or less in the better eye with correction or a visual field of twenty (20) degrees or less.

(5) "Occupational equipment" means equipment essential to perform the job duties at the job site and required as a condition of employment.

(6) "Relative" means an individual related to another individual by lineage, marriage, or adoption and includes a:

(a) Spouse;

(b) Parent;

(c) Grandparent;

(d) Brother;

(e) Sister;

(f) Son;

(g) Daughter;

(h) Grandchild;

- (i) Aunt;
- (j) Uncle;
- (k) Niece;
- (l) Nephew; and

(m) First cousin. [~~including spouses, parents, grandparents, brothers, sisters, sons, daughters, grandchildren, aunts, uncles, nieces, nephews and first cousins.~~]

(7) "Visual impairment" means an individual has a condition of the eye which constitutes or results for the individual in a substantial impediment to employment.

[(4) "Commissioner" means Commissioner of the Department of Vocational Rehabilitation.

(5) "Relative" means an individual related to another individual by blood, marriage, or adoption, including spouses, parents, grandparents, brothers, sisters, sons, daughters, grandchildren, aunts, uncles, nieces, nephews and first cousins.

(6) "Visual impairment" means an individual has a condition of the eye which constitutes or results for the individual in a substantial impediment to employment, as defined by KRS Chapter 163.

(7) "Legally blind" means an individual has a visual acuity of 20/200 or less in the better eye with correction or a visual field of twenty (20) degrees or less, as defined by KRS Chapter 163.

(8) "Occupational equipment" means equipment essential to perform the job duties at the job site and required as a condition of employment.]

Section 2. [Comparable Benefits. Except as provided in this section, the agency shall fully consider any comparable benefits available under any other program to an individual or to members of that individual's family, to meet, in whole or in part, the cost of vocational rehabilitation services:

(1) Services for which consideration of comparable benefits shall not be required include:

(a) Assessment for determining employability and vocational rehabilitation needs;

(b) Counseling, guidance and work-related placement services;

(c) Vocational and other training services including personal and vocational adjustment training, books, and other training services that are not provided in institutions of higher education;

(d) Rehabilitation technology;

(e) Services listed in paragraphs (a) through (d) of this subsection when provided as postemployment services.

(2) Consideration of comparable benefits shall not be required if that consideration would place the applicant or client at extreme medical risk or prior to the provision of services if an immediate job placement would be lost due to a delay in the provision of such comparable benefits. A determination of extreme medical risk shall be based upon medical evidence provided by an appropriate licensed medical professional.

(3) The agency shall not supplant a service that is covered by Medicaid, Medicare, private insurance or any other health services programs. If a vendor of medical services refuses to accept a client's public or private medical coverage for any services covered, referral and assistance shall be provided by the agency in locating and securing the needed medical services through vendors who will accept the client's medical coverage.

(4) The application for and use of comparable benefits shall be used if available at any time during the period that the individual is receiving agency services.

(5) If the individual refuses to apply for or to accept comparable benefits, the agency shall not provide the service using agency funds.

Section 3. Confidentiality. (1) The Department of Vocational Rehabilitation shall safeguard the confidentiality of all personal information, including photographs and lists of names to assure that:

(a) Specific safeguards protect current and stored personal information;

(b) All applicants, clients, representatives of applicants or clients, and as appropriate, service providers, cooperating agencies, and interested persons shall be informed of the confidentiality of personal information and, upon request, the conditions for accessing and releasing this information;

(c) All applicants and clients or their representatives shall be informed about the department's need to collect personal information and policies governing its use including as appropriate:

1. Identification of the authority under which information is collected;

2. Explanation of the principal purposes for which the department intends to use or release the information;

3. Explanation of whether provisions of the information by the individuals is mandatory or voluntary and the effects of not providing requested information to the department;

4. Identification of those situations where the department requires or does not require informed written consent of the individual before information may be released; and

5. Identification of other agencies to which information is routinely released.

(d) Persons who are unable to communicate in English or who rely on special modes of communication shall be provided explanations about state policies and procedures affecting information through methods they can adequately understand.

(2) All personal information in the possession of the department shall be used only for purposes directly connected with the administration of the vocational rehabilitation program. Identifiable personal information shall not be shared with advisory or other bodies which do not have official responsibility for administration of the program. In the administration of the program the department may obtain personal information from service providers and cooperating agencies under assurances that the information shall not be further divulged, except as otherwise provided under this section.

(3) The department may release information to involved individuals under the following conditions:

(a) When requested in writing by the involved individual or the individual's representative, the department shall make all information in the case record accessible to the individual or release it through a representative in a timely manner. Medical, psychological, or other information which the department believes may be harmful to the individual shall not be released directly to the individual, but shall be provided through a representative, a physician or a licensed or certified psychologist;

(b) When personal information has been obtained from another agency or organization, it may be released only by or under the conditions established by the other agency or organization;

(c) A written request from an applicant or client to a member of the congressional delegation requesting assistance or intercession with regard to vocational rehabilitation services shall be construed by the agency to fulfill the requirements of this section.

(4) Personal information may be released to an organization, agency, or individual engaged in audit, evaluation, or research only for purposes directly connected with administration of the vocational rehabilitation program, or for purposes which would significantly improve the quality of life for persons with disabilities and only if the organization, agency, or individual assures that:

(a) The information shall be used only for the purposes for which it is being provided;

(b) The information shall be released only to persons officially connected with the audit, evaluation or research;

(c) The information shall not be released to the involved individual;

(d) The information shall be managed in a manner to safeguard confidentiality; and

(e) The final product shall not reveal any personal identifying information without the informed written consent of the involved applicant or client or a representative.

(5) Information may be released to other programs or authorities under the following conditions:

(a) Upon receiving the informed written consent of the individual, the department may release to another agency or organization for its program purposes only, that personal information which may be released to the involved individual under subsection (3) of this section, and only to the extent that the other agency or organization demonstrates that the information requested is necessary for its program. Medical or psychological information which the department believes may be harmful to the individual may be released when the other agency or organization assures the department that the information

shall be used only for the purpose for which it is being provided and shall not be further released to the involved individual;

(b) The department may release personal information if required by federal law;

(c) The department may release personal information in response to investigations in connection with law enforcement, fraud, abuse (except where expressly prohibited by federal or state laws or regulations), and in response to judicial order; and

(d) The department may also release personal information in order to protect the individual or others when the health or safety of the individual or others is threatened.

Section 4. Extended Evaluation. Substantial physical restoration services (e.g., surgery or physical therapy) shall not be provided in employability evaluation. Major or extensive restoration services shall not be provided to determine if the applicant may benefit in terms of an employment outcome.

Section 5. Employees' Application for Services. (1) [In order to provide agency employees fair and equal access to agency services and to avoid the appearance of impropriety or conflict of interest,] An applicant who is an [agency] employee and the department [agency] shall adhere to the following procedures if [when] the [such-an] employee wishes to apply for rehabilitation services.

(2) [(a)] The employee shall advise the Director of Program Services or a designee [regional administrator] of the intent to apply.

(3) [(b)] The Director of Program Services or a designee and the employee [regional administrator] shall select a counselor to take the application. If [Whenever] practicable, the counselor shall be located in an adjacent district.

[(2)] The employee shall be informed of eligibility or ineligibility for services.

(3) Any employee applicant who is dissatisfied with any action or inaction may appeal pursuant to 781 KAR 1:010.]

Section 3. [6:] Employees' Relatives' Applications for Services. An employee shall not take an application or provide vocational rehabilitation services to a relative. The relative shall be referred to the Director of Program Services or a designee [branch manager]. The Director of Program Services or a designee and the individual [branch manager] shall identify [assign] a staff member who is not a relative to take the application and to provide services as deemed appropriate.

[Section 7. Hearing Impairments. (1) All applicants or clients with a diagnosis of hearing impairment or deafness and determined to be severely disabled shall be provided with a visual evaluation by a physician skilled in diseases of the eye or by an optometrist.

(2) An audiological evaluation shall be used to document hearing impairment or deafness.

(3) An ear, nose and throat (ENT) specialist evaluation of the auditory system shall be provided when symptoms of ear pathology or conductive hearing loss are present.]

Section 4. [8:] Legal Fees. The department [agency] shall not be responsible for any fees incurred by an applicant or eligible individual [client] for legal services.

[Section 9. Maintenance. The agency shall not subsidize a client's home.]

Section 5. [10:] Payment Rates for Purchased Services. (1) If [When] practicable, payment for nonemergency transportation services shall be based on a percentage of the regional capitated transportation networks rates established by the Kentucky Transportation Cabinet. [The department shall maintain, in accessible form, information on current rates of payment for services provided by the agency. A written record of the effective date of adoption of fee schedules or rates of payment shall be maintained.]

(2) The department shall ensure that [physicians or other] a service vendor agrees [vendors of services agree] not to charge or accept from the applicant, [or] eligible individual [client] or a family member [any] payment for services unless the amount of the [such] charge

or payment is previously known to and, if [where] applicable, approved by the department [agency].

(3) Payment to out-of-state vendors shall be governed by the rates established by the vocational rehabilitation agency in the state where services are to be provided. [The establishment, maintenance, and revision of fee schedules and rates of payment for services shall be guided by: review of existing Medicaid, Medicare, or private health care insurance fee schedules; review and consultation with other state rehabilitation agencies; review and consultation with Veteran's Administration or other federal agencies that maintain rate schedules; or consultation with physicians and other vendors of services. Consultation for the purpose of establishing rates of payment may be secured on a fee-for-service basis.]

(4) The rates of payment shall not exceed the maximum established by the agency. A lesser rate may be negotiated between the agency and the service provider.

(5) The agency shall not approve payment for services provided to an individual when the agency has made no prior authorization.

Section 11. Physical or Mental Restoration. Physical or mental restoration services shall be authorized to out-of-state vendors only as follows:

(1) In geographical areas routinely used for the convenience of the individual; or

(2) When it will be economically beneficial to the agency; or

(3) If a particular procedure or mode of treatment is not available in-state. In this case, the schedule of payment shall be governed by the rates established by the vocational rehabilitation agency in the state where services are to be provided.

Section 12. Placement. The commissioner may arrange for job placement services from a private for-profit employment or placement agency in accordance with the informed choice of the individual.

Section 13. Postemployment Services. (1) The expenses of treating acute conditions during postemployment services shall not be borne by the agency.

(2) Postemployment services shall not be provided solely to upgrade a client's financial status.

(3) Support services such as maintenance, transportation, and personal assistance shall be provided only in conjunction with other rehabilitation services and shall not be provided solely to support an individual in employment.

(4) If postemployment services are initiated and it becomes obvious that the client cannot or will not remain in or return to employment, the case shall be terminated. The case shall not be reopened for postemployment services.]

Section 6. [14:] Potentially Terminal Illness. (1) Services shall not be provided to individuals with a potentially terminal illness unless:

(a) There is a favorable medical prognosis for recovery; or

(b) There is a prospect of survival for a reasonable period of time, allowing a return to work for at least twelve (12) months (work life expectancy).

(2) The following guidelines shall be followed in making a determination:

(a) If surgery, chemotherapy, nuclear medical treatment, or similar ancillary medical service is expected to cure the condition, it may be provided as with another medical problem. [If surgery or ancillary medical services, such as chemotherapy or nuclear medical treatment is expected to cure the condition, then these services may be provided as if it were any other medical problem.]

(b) If the attending physician feels the prognosis is guarded, [the agency] staff shall request a letter indicating the individual's [client's] work life expectancy. For those individuals with a twelve (12) month work life expectancy services may be considered.

[Section 15. Prescription Drugs. Current Medicaid rates shall be used to establish payment for prescribed drugs.]

Section 7. [16:] Second Opinions. The department [agency] may seek a second opinion from a qualified practitioner before determining

[the] eligibility [of an applicant] or before authorizing services [for a client].

Section 8. [47:] Self-employment Enterprises. [(1)] The following shall be met prior to planning for self-employment for an eligible individual [individuals] [clients of the agency]:

(1) An eligible individual [Eligible individuals] [(a) Clients] shall agree to undergo appropriate assessment to determine work potential, including mental and physical abilities, and interests, [abilities:] aptitudes, personality traits and other pertinent characteristics.

[(b) There shall be evidence that the client is expected to have approximately five (5) years of work expectancy:

(c) Clients shall demonstrate that they can work with minimal or no supervision:]

(2) [(d)] The department [agency] may require an eligible individual [eligible individuals] [clients] to undergo prevocational training, as needed, to gain skills and knowledge and to complete small business training.

(3) An eligible individual [Eligible individuals] [(e) Clients] shall obtain the required license, permit, certificate, lease, [licenses, permits, certificates, leases:] and in all instances be in conformity with all federal and state laws, and local ordinances [in order] to commence an enterprise.

(4) [(f)] The department [agency] may review Recordkeeping systems prior to the establishment of the business and periodically thereafter until the case is closed or until liens on any department [agency] purchased equipment expire.

[(2) The Director of Program Services or a designee may approve proposed self-employment enterprises requiring expenditures in excess of \$5,000 through review of the following:

(a) Impact on total agency goals:

1. Fiscal considerations;

2. Applicability of statewide laws; and

3. Numerical requirements necessary to demonstrate maintenance of effort and program integrity.

(b) Anticipated cost/benefit ratio and return on investment. Savings derived through increased taxes paid, cessation of benefits, etc., should equal agency expenditure within five (5) years:

(c) Potential for recovery of expenditures from other sources (e.g., Social Security Administration, Workers' Compensation:)]

Section 9. [48:] Sex Change. Department [Agency] funds shall not be used to pay for sex change surgery.

[Section 19. Extended Employment. In addition to the federal requirements for a successful closure, a sheltered employee shall maintain suitable employment for the required sixty (60) days at a minimum of twenty-five (25) percent production of a nondisabled worker:

Section 20. Supported Employment. Supported employment services exceeding \$3500 per client served in individual placements and \$1750 per client served in group placements shall require approval of the Director of Program Services or a designee:]

Section 10. [21:] Tools and Equipment. The department [agency] may recover tools, equipment, and supplies if the eligible individual [client] ceases to use the equipment for the pursuit and practice intended or upon the death of the eligible individual [client].

Section 11. [22:] Training. [(1)] Postsecondary training may be provided for an eligible individual [eligible individuals] [clients] pursuant to this section.

(1) [(a)] Except as provided in this section, tuition and initial registration fees provided to the training facility [institution] of the eligible individual's [client's] choice shall not exceed those of the highest rate charged by a state-supported training facility [institution] in Kentucky that offers similar vocational preparation. The Director of Program Services or a designee may make exceptions if [only when] it is clearly demonstrated that [such] exceptions are reasonable to achievement of the work plan. [financially advantageous to the agency, or are otherwise in the best interests of the agency's achievement of stated goals:]

(2) [(b)] The department [agency] may provide tuition and initial registration fees for postsecondary programs for the deaf recognized by the U.S. Congress as national programs due to the provision of essential support services (e.g., interpreting services, note-taking services, tutoring services).

(3) [(c)] Other department [agency] approved postsecondary programs for the deaf offering interpreting services, note-taking services, and tutoring services may be used [utilized for clients who are deaf] if the total cost of attendance does not exceed the total cost of [provision of] tuition, fees and interpreting services, note-taking services, and tutoring services at the highest rate charged by a state-supported training facility [institution] in Kentucky that offers similar vocational preparation.

(4) [(d)] [Institutional] Training shall be purchased only from training facilities [those schools] that are accredited or licensed by appropriate accrediting or licensing bodies and which comply with all applicable state and federal requirements [applicable to their use by the agency].

(5) [(e)] Training shall be provided only to the operative vocational [entrance] level [of the vocational objective].

(6) An eligible individual [(f) Eligible individuals] [Clients] planning to attend a postsecondary training facility [institution in Kentucky] shall apply for all financial assistance available through [file the Kentucky Financial Aid Form and other need analysis forms as required by] the training facility [school].

[(g) Agency sponsored clients shall maintain full-time student status, as that status is described by the school attended. An exception may be made only in cases where such exception is essential to the achievement of an individual's vocational objective:

(h) Clients shall maintain a "C" average. The agency may continue funding a client for one (1) additional term when this requirement is not met. The agency may require a higher grade point average if such is necessary for satisfactory achievement of the vocational objective:

(i) Termination of agency sponsorship for training shall result in cessation of all support services related to training, e.g., interpreter services, note-taking, personal assistance, maintenance, and transportation:

(j) The client shall furnish the counselor with a grade transcript for each semester or quarter:

(k) Cost of personal assistance services for clients in training shall not exceed the cost of personal assistance services in the agency sponsored attendant care program at the University of Kentucky:

(2) On-the-job training may be provided pursuant to this subsection:

(a) On-the-job training for unskilled and semiskilled labor positions shall not exceed three (3) months in duration, exceptions shall require approval of the Director of Program Services or a designee:

(b) On-the-job training for skilled occupations shall not exceed six (6) months in duration, exceptions shall require approval of the Director of Program Services or a designee:

(c) The vendor or employer shall have made a written commitment to hire the client-trainee upon successful completion of the on-the-job training:

(d) The client in on-the-job training shall be paid at least the legal minimum wage for occupations covered by such statute or the prevailing rate for occupations not covered:

(e) The client in on-the-job training shall receive the compensation coverage, privileges, and other benefits that accrue to other employees:

(f) The agency shall not pay in excess of the legal minimum wage for occupations covered by statute or the prevailing rate for occupations not covered:

(3) Correspondence training may be provided to clients subject to the provision of this subsection:

(a) Correspondence training may be provided only if it is the best available method by which the client can receive the necessary training:

(b) The agency shall not sponsor correspondence courses in subjects such as heavy equipment operation, truck driving, depot agent, detective, or airline employee if practical experience is not provided:

(4) Training outside the contiguous United States may be provided to clients pursuant to this subsection:

(a) Training institutions located outside the contiguous United States shall be considered only if all of the following conditions are met:

1. The client is enrolled in a program in the contiguous United States that requires study abroad to satisfy degree requirements for graduation;
2. The study abroad does not lengthen the total program;
3. The client maintains full-time student status while studying abroad;
4. The client is in good academic standing; and
5. The client's successful achievement of the vocational goal is contingent on participation in the study abroad as a part of the approved curriculum.

(b) If the preceding conditions are met, the agency may provide financial assistance only up to the amount normally authorized for in-state training, excluding transportation costs.]

Section 12. [23.] Transplants or Implants. **A transplant or implant procedure which is** [Transplant or implant procedures which are] experimental or which does not have a consistent record of significant improvement in vocational functioning in better than fifty (50) percent of the subjects shall not be provided by the department [agency].

Section 13. [24.] Vehicle Purchase. The department [agency] shall not purchase **a vehicle unless** [vehicles except when] the occupation of the eligible individual [client] **requires** [will require] a vehicle as occupational equipment.

Section 14. [25.] Visual Impairments. **An eligible individual** [Eligible individuals] [(1) Pursuant to KRS Chapter 163, individuals with a reported or diagnosed primary disability of visual impairment shall not be served by the department.

(2) Clients with a secondary disability of visual impairment may be served [only] if another impairment, other than visual, poses the more substantial impediment to employment. [The agency shall secure, in all cases of visual impairment, an evaluation of visual loss provided by a physician skilled in the diseases of the eye or by an optometrist.

(3) The agency shall secure, in all cases of blindness, a screening for hearing loss from a physician skilled in the diseases of the ear or from an audiologist licensed or certified in accordance with state laws or administrative regulations.

(4) Individuals with deaf-blindness shall be served by the agency that can most appropriately meet the specific and individual needs of the applicant or client who is deaf-blind.]

SAM SERRAGLIO, Commissioner

SUE SIMON, Acting General Counsel

APPROVED BY AGENCY: April 9, 1998

FILED WITH LRC: April 13, 1998 at 4 p.m.

**WORKFORCE DEVELOPMENT CABINET
Department of Vocational Rehabilitation
(As Amended at ARRS, June 9, 1998)**

781 KAR 1:040. Rehabilitation technology services.

RELATES TO: KRS 151B.190, 29 USC 706(8)(A)[, 34 CFR 361.31(b)]

STATUTORY AUTHORITY: KRS 151B.185, 151B.195

NECESSITY, FUNCTION, AND CONFORMITY: KRS 151B.195 requires the Commissioner, Department of Vocational Rehabilitation to promulgate administrative regulations governing the services and administration of the Department of Vocational Rehabilitation. This administrative regulation prescribes when, and under what conditions, rehabilitation technology services shall be provided, in order to distribute limited funds more equitably over the entire population of otherwise eligible **individuals** [clients].

Section 1. Definitions. (1) "Applicant" means an individual who has signed a letter or document requesting vocational rehabilitation services and who is available to complete an assessment.

(2) "Department" means the Department of Vocational Rehabilitation and its appropriate staff members who are authorized under state law to perform the functions of the state regarding the state plan and its supplement.

(3) "Eligible individual" ["Client"] means an individual who has been determined by an appropriate department [state-unit] staff member to meet the basic conditions of eligibility for vocational rehabilitation services as defined in 34 CFR 361.31(b) [which is adopted without change].

[(2) "Applicant" means an individual who has signed a letter or document requesting vocational rehabilitation services and for whom the following minimum information has been furnished: name and address, disability, age and sex, date of referral, and source of referral.

(3) "Agency" or "department" means the Department of Vocational Rehabilitation, and its appropriate staff members who are authorized under state law to perform the functions of the state regarding the state plan and its supplement.

(4) "Commissioner" means Commissioner of the Department of Vocational Rehabilitation.]

Section 2. Computer Hardware and Software Purchases. The department shall not purchase **a computer, microcomputer,** [computers, microcomputers,] other hardware or software for the personal use of **an applicant or eligible individual** [applicants or eligible individuals] [clients]. The department [agency] may consider the provision or upgrade or replacement of computer hardware and software if:

(1) The equipment is essential to compensate for the limitations caused by the disability; or

(2) The equipment is required for the eligible individual [client] to achieve a vocational objective of competitive employment;

(3) [In addition,] One (1) or more of the following criteria are [shall be] met:

(a) The equipment is required for vocational preparation; or

(b) The equipment is required to perform [by] the job and no provision is made by the employer to supply the equipment; or

(c) The equipment will enable an eligible individual [a-client] to become competitive with nondisabled employees performing the same duties.

Section 3. Computer Upgrades or Replacements. [(1)] **A computer upgrade or replacement** [Computer upgrades or replacements] may be provided for an eligible individual [a-client] if needed for obtaining and maintaining employment.

[(2) Costs of upgrading or replacing computers in excess of \$1,000 shall require the approval of the Director of Program Services or a designee.

(3) Computer upgrades or replacements in excess of \$6,000 may be provided if the Director of Program Services determines that documentation exists that the modification has a direct relationship to the employment goal and that failure to provide the modification would preclude the successful achievement of the employment goal.]

Section 4. Second Time Upgrades or Replacements. (1) Except as provided in this section, the department [agency] shall **not provide more than** [provide only] one (1) computer upgrade or replacement per individual.

(2) The department [agency] may approve a second time upgrade or replacement under the following conditions:

(a) The eligible individual [client] has demonstrated a two (2) year continuous work history; and

(b) The eligible individual's [client's] employer attests that the upgrade or replacement is needed to maintain employment.

Section 5. General [Computer Repair. (1) The agency shall not provide repair to computers.

(2) Maintenance and repair of computers beyond the warranty shall be the responsibility of the individual.

VOLUME 25, NUMBER 1 – JULY 1, 1998

Section 6. [Vehicle Modification (General)]. (1) Modification of a van for an eligible individual [a client] who can be functional in an automobile shall **not be authorized over** [be authorized only to] the maximum cost of the automobile modification.

(2) The department [agency] may provide van modifications for eligible individuals [clients] determined by a department [the agency] specialist [of the Driver Evaluation/Vehicle Modification Program] to be unable to transfer independently into and out of an automobile.

(3) Vehicle modifications in excess of \$5,000 shall **not be provided except** [be provided only] on the recommendation of a department [the agency] specialist [of the Driver Evaluation/Vehicle Modification Program].

(4) All other individuals who [are not clients of the agency in] need [of] driver evaluation, driver training or vehicle modification may purchase [evaluation] services on a fee for service basis if all department [agency] applicants and eligible individuals [clients] have been served.

(5) Vehicle modification in excess of \$5,000 shall **not** be provided until [only after] the eligible individual [client] completes a driver evaluation and vehicle modification assessment by a department [an agency] specialist [of the Driver Evaluation/Vehicle Modification Program].

(6) Vehicle modifications in excess of \$5,000 shall be inspected and approved by a department [an agency] specialist [from the Driver Evaluation/Vehicle Modification Program] before payment is made.

[Section 7. Specific Modifications Costing Less than \$1,000.] Agency staff may approve modifications to a vehicle if:

(1) Modifications is simple and is not related to overall vehicle engine or body condition; and

(2) Modification is not of a substantial structural nature; and

(3) Maintenance records and overall condition of the vehicle can justify modification.]

Section 6. [8.] Specific Vehicle Modifications Costing More than \$5,000 [1,000]. (1) Except as provided in subsection (2) of this section, a vehicle modification [vehicle modifications] costing in excess of \$5,000 [1,000] shall **not** be provided unless the eligible individual:

(a) Has a [only for eligible individuals [clients] whose] vocational objective of competitive employment; and

(b) Is [competitive employment and who are] within two (2) years [one (1) year] of job placement.

(2) Vehicle modifications may be provided to an individual who is [individuals who are] not within two (2) years [one (1) year] of job placement if the Director of Program Services determines that documentation exists that the modification would result in a substantial cost savings to the department.

(3) Vehicle modifications costing in excess of \$5,000 [1,000] shall **not** [only] be provided on a new vehicle [new vehicles] except as provided in this section.

(4) The department [agency] may approve vehicle modifications in excess of \$5,000 for older vehicles [in excess of \$1,000] if maintenance records and overall condition of the vehicle can justify the modification as attested by a department [an agency] specialist [of the Driver Evaluation/Vehicle Modification Program]. The modification shall demonstrate cost savings to the department [agency].

Section 7. [9.] Upgrading and Repair of Vehicle Modification. (1) Vehicle modification upgrades and repair may be provided for an eligible individual [a client] if needed for obtaining or maintaining employment.

(2) [Upgrading and repair of vehicle modification in excess of \$1,000 shall require the approval of the Director of Program Services or a designee.]

(3) Upgrade or repair of vehicle modifications in excess of \$10,000 [6,000] may be provided if the Director of Program Services determines [that documentation exists] that the modification has a direct relationship to the employment goal and that failure to provide the modification would preclude the successful achievement of the employment goal.

Section 8. [10.] Second Time Modifications. (1) Except as provided in this section, the department [agency] shall **not provide more**

than [provide only] one (1) vehicle modification per eligible individual [client].

(2) The department [agency] may approve a second time vehicle modification under the following conditions:

(a) The eligible individual [client] has demonstrated a two (2) year continuous work history; and

(b) The eligible individual's [client's] employer attests that the modification is needed to maintain employment; and

(c) The modification has met a seven (7) year Internal Revenue Service depreciation schedule from the date of first modification.

[Section 11. Vehicle Repair.] (1) The agency shall not provide repair to vehicles:

(2) The agency shall not provide or repair any standard or optional automatic equipment. Equipment includes: power steering, power brakes, automatic transmission, air conditioning, tilt steering, etc.]

Section 9. [12.] Property Modification. (1) Permanent, nonrecoverable modification to a private home, business, or property shall **be** [private homes, businesses or property is] an allowable expenditure if determined essential to achieve the employment objective of the eligible individual. A direct relationship between the provision of the modification and the projected employment goal shall be demonstrated. The eligible individual shall meet economic need qualifications. The eligible individual [counselor] shall make every attempt to use [utilize] recoverable, nonpermanent modifications if possible or cost effective.

(2) [The agency may provide essential services necessary to alter or adapt the work situation to enable the client to obtain employment or to insure continuation of employment, including the building of a permanent ramp for a wheelchair, modification of machinery to enable the individual to use that particular machine, or a specially designed safety device.]

(3) Except as provided in this section, property modifications in excess of \$10,000 [6,000] shall not be allowed.

(3) [(4)] Property modifications in excess of \$10,000 [6,000] may be provided if the Director of Program Services determines that documentation exists that the modification has a direct relationship to the employment goal and that failure to provide the modification would preclude the successful achievement of the employment goal.

SAM SERRAGLIO, Commissioner

SUE SIMON, Acting General Counsel

APPROVED BY AGENCY: April 9, 1998

FILED WITH LRC: April 13, 1998 at 4 p.m.

PUBLIC PROTECTION AND REGULATION CABINET Department of Financial Institutions (As Amended at ARRS, June 9, 1998)

808 KAR 10:010. Forms for application, registration; notice filing; reporting and compliance.

RELATES TO: KRS 292.330(2), (9), (13)(e), 292.350(2), 292.360(2), 292.370(2), 292.410(1)(q), 292.430(1), 1988 Ky. Acts ch. 20, sec. 11 [Chapter 292]

STATUTORY AUTHORITY: KRS 292.500(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 292.330(2), (9), (13)(e), 292.350(2), 292.360(2), 292.370(2), 292.410(1)(q), 292.430(1), and 1988 Ky. Acts ch. 20, sec. 11, require the department to prescribe the required forms for registration or renewal registration, for a notice filing, for a registration exemption, and for withdrawal of registration. This administrative regulation establishes the required forms and incorporates by reference those forms.

Section 1. (1) Pursuant to KRS 292.330(2), Form BD, Application for Registration as a Broker-Dealer, shall be completed to register as a broker-dealer in Kentucky.

(2) Pursuant to KRS 292.330(2), Form U-4, Application for Registration as Agent or Transfer of an Agent; Kentucky In-

VOLUME 25, NUMBER 1 – JULY 1, 1998

vestment Advisor Representative Qualification Form, shall be completed to:

(a) Register as a broker-dealer agent or an investment adviser representative in Kentucky; or

(b) Transfer a broker-dealer agent's registration to another broker-dealer.

(3) Pursuant to KRS 292.330(9), Form 33-e-1, Application for Renewal of Issuer Agents, shall be completed to renew registration as an issuer agent in Kentucky.

(4) Pursuant to KRS 292.330(2), Form ADV, Application for Registration of an Investment Adviser, including Schedule I, shall be completed to register as an investment adviser in Kentucky.

(5) Pursuant to KRS 292.330(9), Form 33-h-1, Application for Renewal of Investment Adviser's License, shall be completed to renew registration as an investment adviser in Kentucky.

(6) Pursuant to KRS 292.350(2), Form 35-a, Application for Registration by Notification (Nonissuer Distribution), shall be completed to register a security for sale in Kentucky by notification.

(7) Pursuant to KRS 292.350(2), 292.360(2), 292.380(2), and 808 KAR 10:280, Section 2(1), Form U-1, Uniform Application to Register Securities (Coordination, Qualification or Notification), shall be completed to register a security for sale in Kentucky by coordination, qualification, notification, or as a small corporate offering.

(8) Pursuant to 1998 Ky. Acts ch. 20, sec. 11, Form NF, Uniform Investment Company Notice Filing, shall be completed to make a notice filing in Kentucky.

(9) Pursuant to KRS 292.410(1)(q), 808 KAR 10:210, Section 1(3)(b)1, and 808 KAR 10:280, Section 2(1), Form D, Notice of Sale of Securities Pursuant to Regulation D, Section 4(6), and/or Uniform Limited Offering Exemption, shall be completed to:

(a) File for an exemption from the registration of a security under KRS 292.410(1)(q); or

(b) Register an offering under 808 KAR 10:280, Section 2(1).

(10) Pursuant to KRS 292.430(1), Form U-2, Uniform Consent to Service of Process (Investment Adviser, Broker-Dealer, or Issuer), shall be completed to register as an investment adviser, broker-dealer, or issuer in Kentucky.

(11) Pursuant to KRS 292.330(2)(c), 292.350(2)(b), 292.360(2)(e), and 292.370(2)(a), Form U-2A, Uniform Form of Corporate Resolution (Investment Adviser, Broker-Dealer, or Issuer), shall be completed to:

(a) Register as a broker-dealer or an investment adviser; or

(b) Register a security for sale by an issuer in Kentucky.

(12) Pursuant to KRS 292.330(13)(e), Form BDW, Notice of Broker-Dealer Withdrawal, shall be completed if a broker-dealer withdraws his registration in Kentucky.

(13) Pursuant to 808 KAR 10:280, Form U-7, Small Corporate Offerings Registration, shall be completed by a company who:

(a) Meets the eligibility requirements established in that administrative regulation; and

(b) Wants to register an offering pursuant to that administrative regulation.

Section 2. Incorporation by Reference. (1) The following material is incorporated by reference: [To promulgate and make available to persons affected by the Kentucky Securities Act the forms necessary for registration, reporting and general compliance:

Section 1. The following forms are incorporated [herein] by reference. The requirements and instructions contained in the forms shall have the same force and effect as rules and administrative regulations duly promulgated. Information on obtaining the forms is available through the National Association of Securities Dealers (NASD), 1735 K Street, N.W., Washington, D.C. 20006 (or any regional NASD office) or from the Department of Financial Institutions, 477 Versailles Road, Frankfort, Kentucky 40601.]

(a) [(+)] Form BD (revised July 1988); Application for Registration as Broker-Dealer;

(b) [(2)] Form U-4 (revised April 1990) Application for Registration as Agent or Transfer of an Agent; Kentucky Investment Advisor Representative Qualification Form;

(c) [(3)] Form 33-e-1 (revised October 1990); Application for Renewal of Issuer Agents;

(d) [(4)] Form ADV (revised May 31, 1997 [August 1988]); Application for Registration of an Investment Adviser (may be obtained from Securities and Exchange Commission, Branch of BD and IA Registration, Washington, D.C. 20549) (including Schedule I);

(e) [(5)] Form 33-h-1 (revised October 1990); Application for Renewal of Investment Adviser's License;

(f) [(6)] [Form 34 (revised July 1990); Report to be Filed by an Issuing Company Registered for the Purpose of Selling Its Own Securities:

(7)] Form 35-a (revised July 1990); Application for Registration by Notification (Nonissuer Distribution);

(g) [(7)] [(8)] Form U-1 (revised July 1990); Uniform Application to Register [for Registration of] Securities (Coordination, Qualification or Notification) [by Notification or Coordination];

(h) [(8)] Form NF - Uniform Investment Company Notice Filing, 1998 edition

(i) [(9)] Form D - Notice of Sale of Securities Pursuant to Regulation D, Section 4(6), and/or Uniform Limited Offering Exemption, 1998 edition;

[(9)] Form I-CURA (Investment Company Uniform Report and/or Application) (revised July 1990); Application for Annual Renewals of Investment Company Registrations:

[(10)] Form 37 (revised July 1990) (amended); Application for Registration of Securities by Qualification:

[(11)] Form 38-a (revised July 1990); Impounding Agreement.]

(j) [(10)] [(12)] Form U-2 (revised July 1990); Uniform Consent to Service of Process [and Jurisdiction] (Investment Adviser, Broker-Dealer or Issuer);

(k) [(11)] [(13)] Form U-2A (revised July 1990); Uniform Form of Corporate Resolution (Investment Adviser, Broker-Dealer or Issuer);

(l) [(12)] [(14)] Form BDW (revised May 1987); Notice of Broker-Dealer withdrawal; and

(m) [(13)] [(15)] Form U-7 (Small Corporate Offerings Registration) (adopted by NASAA April 1989).

(2) This material may be inspected, copied, or obtained at the:

(a) Department of Financial Institutions, 477 Versailles Road, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.; or

(b) National Association of Securities Dealers (NASD), 1735 K Street, N.W., Washington, D.C. 20006 (or a regional NASD office).

ARTHUR FREEMAN, Commissioner

COLLEEN KEEFE, Staff Attorney

APPROVED BY AGENCY: March 12, 1998

FILED WITH LRC: March 13, 1998 at 11 a.m.

PUBLIC PROTECTION AND REGULATION CABINET

Department of Financial Institutions

(As Amended at ARRS, June 9, 1998)

808 KAR 10:020. Capital, records and reporting requirements of broker-dealers. [Net capital of broker-dealers.]

RELATES TO: KRS 292.330, 292.460, 15 USC 78o(h) [Chapter 292]

STATUTORY AUTHORITY: KRS 292.500(3), 15 USC 78o(h) NECESSITY, FUNCTION, AND CONFORMITY: KRS 292.500(3) **authorizes the commissioner to promulgate administrative regulations necessary to carry out the provisions of KRS Chapter 292. 15 USC 78o(h) prohibits a state from establishing capital, custody, margin, financial responsibility, making and keeping records, bonding, or financial or operational reporting requirements for a broker, dealer, municipal dealer, government security broker, or government security dealer that differs from, or are in addition to, the federal requirements. This administrative regulation establishes the state requirements for a**

person registered pursuant to the federal requirements established in 15 USC 78o.

Section 1. A broker-dealer, municipal security dealer, government security broker, or government security dealer shall:

(1) Be deemed to have complied with the requirements established in KRS 292.330 relating to capital, custody, margin, financial responsibility, making and keeping records, bonding, or financial or operational reporting if:

(a) The person is:

1. Registered with the United States Securities and Exchange Commission pursuant to 15 USC 78o; and

2. In compliance with the rules and regulations enacted by the United States Securities and Exchange Commission pursuant;

(b) A copy of the information kept or provided to the United States Securities and Exchange Commission is made available or provided to the department as required by the commissioner; and

(2) Comply with a reasonable request made by the commissioner or a designated employee of the department for the assembly and production of information required to conduct an examination pursuant to KRS 292.330 or an investigation pursuant to KRS 292.460. [To adopt federal requirements for broker-dealers with respect to capital, custody, margin, financial responsibility, making and keeping records, bonding, and financial and operational reporting requirements thereby increasing uniformity among the states. [To insure that broker-dealers entrusted with the custody of their customers' money and securities are sufficiently capitalized and sufficiently liquid so as to reduce the risk of customer loss in the event the broker-dealer encounters financial misfortune.]]

Section 1. Any broker-dealer, municipal securities dealer, government securities broker or government securities dealer registered with the United States Securities and Exchange Commission pursuant to Section 15 of the Securities Exchange Act of 1934 (15 USC 78o) and in compliance with all applicable rules of the United States Securities and Exchange Commission enacted pursuant thereto shall be deemed in compliance with all requirements of KRS 292.330 pertaining to capital, custody, margin, financial responsibility, making and keeping records, bonding, and financial and operational reporting requirements so long as registered, so long as in compliance with all of the rules of the United States Securities and Exchange Commission and so long as copies of any information kept or provided to the United States Securities and Exchange Commission is made available or provided to the department as the commissioner may direct by administrative regulation or order. This provision shall not preclude the commissioner or employees of the department acting at the direction of the commissioner from making reasonable requests for the assembly and production of information for the purpose of conducting an examination pursuant to KRS 292.330 or an investigation pursuant to KRS 292.460.] [All broker-dealers shall meet the net capital requirements of Rule 15c3-1, 15c3-1a, 15c3-1b, 15c3-1c and 15c3-1d (17 CFR Sec. 240.15c3-1, Sec. 240.15c3-1a, Sec. 240.15c3-1b, Sec. 240.15c3-1c, and Sec. 240.15c3-1d) of the Securities and Exchange Commission of the United States Government as it exists on April 1, 1984.

Section 2. Regardless of any contrary provision in rule 15c3-1, 15c3-1a, 15c3-1b, 15c3-1c and 15c3-1d (17 CFR Sec. 240.15c3-1, Sec. 240.15c3-1a, Sec. 240.15c3-1b, Sec. 240.15c3-1c, and Sec. 240.15c3-1d) no broker-dealer shall have and maintain liquid net capital of less than \$5000 and if said broker-dealer has custody of client funds he shall have and maintain liquid net capital of \$25,000.

Section 3. The minimum capitalization established in Sections 1 and 2 of this administrative regulation may be reduced or waived by the commissioner upon a showing that such minimum capitalization is not necessary in the public interest given the limited nature of the broker-dealer's activities.

Section 4. Generally accepted accounting principles shall apply in interpreting and administering the provisions of this rule if federal and

Kentucky statutes, case law, and administrative regulations and interpretations leave an issue under this regulation unresolved, but only until the issue is resolved by federal or Kentucky statutes, case law, administrative regulations, or interpretations.]]

ARTHUR FREEMAN, Commissioner

COLLEEN KEEFE, Staff Attorney

APPROVED BY AGENCY: March 12, 1998

FILED WITH LRC: March 13, 1998 at 11 a.m.

PUBLIC PROTECTION AND REGULATION CABINET

Department of Financial Institutions

(As Amended at ARRS, June 9, 1998)

808 KAR 10:030. Conduct of broker-dealers and employees; investment advisers and representatives.

RELATES TO: KRS Chapter 292

STATUTORY AUTHORITY: KRS 292.500(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 292.500(3) authorizes the commissioner to promulgate administrative regulations necessary to carry out the provisions of KRS Chapter 292. This administrative regulation establishes requirements relating to the conduct of a broker-dealer, employee, investment adviser, or representative. [To insure that broker-dealers, investment advisers, and agents consider the "suitability" of the security they sell to the customer and to insure that broker-dealers adequately supervise the conduct of their employees.]

Section 1. A registered broker-dealer, registered agent, investment adviser, or [Every registered broker-dealer and every registered agent, and as appropriate, every investment adviser and] investment adviser representative who recommends to a customer the purchase, sale or exchange of a [any] security shall have reasonable grounds to believe that the recommendation is not unsuitable for the [such] customer on the basis of:

(1) information furnished by the [such] customer after reasonable inquiry concerning the customer's investment objectives, financial situation and needs; and

(2) [any] Other information known by the [such] broker-dealer, [or] agent, [or] investment adviser or investment adviser representative.

Section 2. A [Every] registered agent of a registered broker-dealer shall be subject to the supervision of a supervisor designated by the [such] broker-dealer. The supervisor may be a partner, officer, office manager or [any] other qualified person, or in the case of a sole proprietor, the broker-dealer.

Section 3. As part of his responsibility under this administrative regulation, a [rule, but only to the extent required by the Securities Exchange Act of 1934 or the rules adopted thereunder, every] registered broker-dealer shall establish, maintain and enforce written procedures, a copy of which shall be kept in each business office, which shall set forth the procedures adopted by the broker-dealer to comply with the following duties [imposed by this rule]:

(1) The review and written approval by the designated supervisor of the opening of each new customer account;

(2) The frequent examination of all customer accounts to detect and prevent irregularities or abuse;

(3) The prompt review and written approval of the designated supervisor of all securities transactions by registered agents and all correspondence pertaining to the solicitation or execution of all securities transactions by the agents; and

(4) The prompt review and written approval of the handling of all customer complaints.

ARTHUR FREEMAN, Commissioner

COLLEEN KEEFE, Staff Attorney

APPROVED BY AGENCY: March 12, 1998

FILED WITH LRC: March 13, 1998 at 11 a.m.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Financial Institutions
(As Amended at ARRS, June 9, 1998)

808 KAR 10:040. Dishonest or unethical practice defined.

RELATES TO: KRS 292.330(13) [(12)] (a)7

STATUTORY AUTHORITY: KRS 292.500(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 292.500(3) authorizes the commissioner to promulgate administrative regulations necessary to carry out the provisions of KRS Chapter 292. KRS 292.330(13)(a)7 authorizes the commissioner to take disciplinary action against the registration of a broker-dealer, agent, or investment adviser if a person has engaged in dishonest or unethical practice in the securities business. This administrative regulation establishes what activities are considered as dishonest or unethical practice. [To clarify and define the phrase "dishonest or unethical practice" as it appears in KRS 292.330(12)(a)7.]

Section 1. Dishonest or unethical practice shall include: [For purposes of KRS 292.330(13) [(12)](a)7, dishonest or unethical practice shall include but not limited to:]

(1) Unreasonable delay or failure to:

(a) Execute an order;

(b) Liquidate a customer's account; or

(c) Make delivery of:

1. A security purchased; or

2. A remittance (or credit) of a security sold; [Unreasonable delay or failure to execute orders, liquidate customers' accounts, or make [in making] delivery of securities purchased or remittances (or credit) of securities sold.]

(2) Selling a security:

(a) At an unfair price [securities at unfair prices] in relation to market value; or

(b) With an unreasonable or excessive markup [markups] or commission;

(3)(a) Effecting a transaction [transactions] in the account of a customer without his knowledge or consent; or

(b) Maintaining a discretionary account [accounts] without written authorization;

(4) A willful switch [Willful switches], churning, overtrading or reloading of a security [securities] in a customer's account for the purpose of accumulating or compounding a commission; [commissions.]

(5) Inducing a customer to invest:

(a) Beyond his known immediate financial resources; or

(b) Without regard to the nature and character of the customer's [such] account;

(6) Engaging or aiding in:

(a) Boiler room operations, including high pressure tactics to promote a speculative offering; or

(b) The promotion of a hot issue by an intensive telephone campaign in which the prospective purchaser is encouraged to make a hasty decision to buy a security irrespective of the purchaser's investment need or objective; [Engaging or aiding in "boiler room" operations or high pressure tactics in connection with the promotion of speculative offerings or "hot issues" by means of an intensive telephone campaign, whereby the prospective purchaser is encouraged to make a hasty decision to buy irrespective of his investment needs and objectives.]

(7)(a) Participation in the solicitation or offer for sale of a security [securities] without the use and dissemination of a prospectus [if [where] required]; or

(b) Making an oral or written statement [statements] contrary to or inconsistent with an enclosure contained in a prospectus; [the enclosures contained therein.]

(8) Making a false, misleading, deceptive, exaggerated or flamboyant representation or prediction [representations or predictions] in the solicitation or sale of a security, including [as for example:]

(a) That the security will be resold or repurchased;

(b) That it will be listed or traded on an exchange or established market;

(c) That it will result in an assured, immediate or extensive increase in value, future market price, or return on an investment [investments];

(d) With respect to the issuer's financial condition, anticipated earnings, potential growth or success; or

(e) That there is a guarantee against risk loss;

(9)(a) Failing to disclose a dual agency capacity; or

(b) Effecting a transaction [transactions] upon a term or condition not stated in a confirmation; [terms and conditions other than those stated per confirmations.]

(10)(a) Failing to make a bona fide public offering pursuant to an underwriting agreement; or

(b) Entering into an underwriting agreement which establishes an unfair or unreasonable term, condition, [terms and conditions] or compensation;

(11) Establishing a fictitious account [accounts] in order to execute a transaction [transactions] which would otherwise be prohibited;

(12) Entering into an agreement for selling a concession, discount, commission, or allowance as consideration for a service in connection with the distribution or sale of a security in Kentucky with a broker-dealer, agent, investment adviser, or investment adviser representative who is not:

(a) Licensed in Kentucky; and

(b) Exempt from the registration requirements for conducting a securities business in Kentucky; [Entering into agreements for selling concessions, discounts, commissions or allowances as consideration for services in connection with the distribution or sale of a security in Kentucky with any nonlicensed broker-dealer, [or] agent, investment adviser, or investment adviser representative unless such person is not required to be registered in order to engage in the securities business in this state.]

(13) [Operating a securities business while being unable to meet current liabilities or violating any rule or order relating to minimum capital, bond, recordkeeping and report requirements, or provisions concerning use, commingling or hypothecation of customer's funds or securities;

(14) Failure or refusal to:

(a) Furnish a customer, upon reasonable request, information to which he is entitled; or

(b) [to] Respond to a formal written demand or complaint; or

(14) [(15)] Attempting to enforce a [any] condition, stipulation or provision against a customer in this state if [when] the result will:

(a) [would] Leave the customer without the choice of a forum for dispute resolution in this state; or

(b) [would] Limit the timeliness of an action to a [any] period less than that established [contained] in KRS 292.480(3).

ARTHUR FREEMAN, Commissioner

COLLEEN KEEFE, Staff Attorney

APPROVED BY AGENCY: March 12, 1998

FILED WITH LRC: March 13, 1998 at 11 a.m.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Financial Institutions
(As Amended at ARRS, June 9, 1998)

808 KAR 10:080. Guidelines for issuers.

RELATES TO: KRS 292.370, 292.390(1)(f) [Chapter 292]

STATUTORY AUTHORITY: KRS 292.500(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 292.500(3) authorizes the commissioner to promulgate administrative regulations necessary to carry out the provisions of KRS Chapter 292. KRS 292.390(1)(f) authorizes the commissioner to issue a stop order on a registration statement if he finds that the order is in the public interest and that an offering was made with unreasonable amounts of promoters' profits or participation. This administrative regulation establishes requirements governing the offering of a security registered pursuant to KRS 292.370 by a promotional company. [To provide guidelines for

~~issuers of securities of promotional companies in reference to KRS 292.390(1)(f)-j~~

Section 1. An offering of securities to be registered pursuant to KRS 292.370 by a promotional company shall meet the following conditions:

(1) There shall exist a reasonable relationship between:

(a) The consideration paid by the promoters and the public offering price;

(b) The number of shares issued and the total amount of securities to be outstanding upon completion of the offering; and

(c) The percentage of the promoters' equity and the amount and term of their investment.

(2)(a) Except as provided in paragraph (b) of this subsection, the sale of the securities at the proposed public offering price shall [will] not cause a dilution of the public purchaser's investment greater than sixty-six and two-thirds (66 2/3) percent [unless otherwise permitted by the commissioner.] [thirty-three and one-third (33 1/3) percent.]

(b) The commissioner may, upon application for good cause shown, authorize the sale of a security that does not comply with the percentage established in paragraph (a) of this subsection if the action is necessary or appropriate in the public interest, or for the protection of an investor.

ARTHUR FREEMAN, Commissioner

COLLEEN KEEFE, Staff Attorney

APPROVED BY AGENCY: March 12, 1998

FILED WITH LRC: March 13, 1998 at 11 a.m.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Financial Institutions
(As Amended at ARRS, June 9, 1998)

808 KAR 10:090. Issuer's reports.

RELATES TO: KRS 292.360, 15 USC 78m, 78o(d) [Chapter 292]

STATUTORY AUTHORITY: KRS 292.500(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 292.500(3) authorizes the commissioner to promulgate administrative regulations necessary to carry out the provisions of KRS Chapter 292. KRS 292.360 establishes procedures by which a security for which a federal registration statement has been filed in connection with the same offering to register by coordination. This administrative regulation establishes a procedure for an issuer to keep the registration statement current beyond the one (1) year period of registration. [To provide a method by which issuers may keep a registration statement current beyond the initial one (1) year period of registration.]

Section 1. The person who files a registration statement pursuant to KRS 292.360, ~~except a registration statement which relates only to redeemable securities issued by an open-end management investment company as defined in the Investment Company Act of 1940,~~ shall [may] keep the registration statement current by filing the following:

(1) A copy of the issuer's annual report on Form 10-K as filed with the Securities and Exchange Commission pursuant to 15 USC 78m or 78o(d) [Section 13 or Section 15(d) of the Securities Exchange Act of 1934], or a document containing the information required by 15 USC 78m or 78o(d); [equivalent information acceptable to the commissioner.]

(2) A statement of the aggregate amount of securities sold in the state of Kentucky during the preceding twelve (12) month period; and

(3) A [Any] posteffective amendment [amendments] to the issuer's federal registration statement not already on file with the department.

ARTHUR FREEMAN, Commissioner

COLLEEN KEEFE, Staff Attorney

APPROVED BY AGENCY: March 12, 1998

FILED WITH LRC: March 13, 1998 at 11 a.m.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Financial Institutions
(As Amended at ARRS, June 9, 1998)

808 KAR 10:110. Records of investment advisers.

RELATES TO: KRS 292.330(12)(a), 17 CFR 275.204-2, 15 USC 80b-3 [Chapter 292]

STATUTORY AUTHORITY: KRS 292.330(12)(a), 292.500(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 292.500(3) authorizes the commissioner to promulgate administrative regulations necessary to carry out the provisions of KRS Chapter 292. KRS 292.330(12)(a) requires an investment adviser who maintains his principal place of business in Kentucky to make and keep records required by the commissioner. KRS 292.330(12)(a) establishes separate requirements for an investment adviser who maintains his principal place of business in a state other than Kentucky. This administrative regulation establishes the recordkeeping requirements for an investment adviser who maintains his principal place of business in Kentucky.

Section 1. (1) Pursuant to KRS 292.330(12)(a), an investment adviser who maintains his principal place of business in Kentucky shall:

(a) Meet the recordkeeping requirements established in 15 USC 80b-3; and

(b) Maintain his books and records in accordance with the applicable federal regulations, including 17 CFR 275.204-2.

(2) The requirements established in subsection (1) of this section shall apply to an investment adviser subject to the provisions of KRS Chapter 292.

(3) The commissioner may upon application for good cause shown relieve an investment adviser of compliance with the requirements established in subsection (1) of this section if the action is in the public interest. [To insure that all investment advisers maintain and preserve sufficient records for the efficient operation of their business and for the protection of their clients.]

Section 1. Pursuant to KRS 292.330(12)(a), all investment advisers shall meet the recordkeeping requirements of section 203 of the Investment Advisers Act of 1940 (15 USC 80b-3), and maintain their books and records in accordance with the rules enacted thereunder by the United States Securities and Exchange Commission. Such rules, which are expressly incorporated by reference as if set out herein, shall include but not necessarily be limited to 17 CFR 275.204-2. This administrative regulation shall apply to investment advisers subject to the Securities Act of Kentucky regardless of whether they are subject to the Investment Advisers Act of 1940 or subject to the rules of the United States Securities and Exchange Commission. The commissioner may, by order and upon application for good cause shown, relieve an investment adviser of compliance with this administrative regulation in part if such action is in the public interest.

Section 2. For those advisers who maintain a principal place of business in a state other than Kentucky, the requirements of Section 1 of this administrative regulation shall be limited by the books and records and recordkeeping requirements of the state where the investment adviser has its principal place of business, provided that the adviser is registered in that state and in compliance with its books and records and recordkeeping requirements. [Every registered investment adviser shall maintain and keep current the following books and records:

(1) Ledgers (or other records) reflecting all assets and liabilities, income and expense and capital accounts.

(2) A record showing all payments received, including date of receipt, purpose and from whom received; and all disbursements, including date paid, purpose and to whom made.

(3) A record showing all receivables and payables.

(4) Records showing separately for each client the securities purchased or sold and, to the extent it has been made available to the investment adviser, the date and amount of and price at which such purchases or sales were executed. If available to the investment ad-

VOLUME 25, NUMBER 1 – JULY 1, 1998

viser this record should also show the name of the security broker-dealer who handled the transaction.

(5) Records showing separately all securities bought or sold by the clients of the investment adviser and indicating thereon with proper identification of the individual account, the date, amount, and the price at which such securities were purchased or sold by or for each client; or, in the alternative, a record showing all of such securities bought or sold by or for the accounts of all clients of the investment adviser in each month, the total number of shares or principal amount of each security bought or sold and the lowest and highest price at which such purchases or sales were made during the month.

(6) Copies of broker-dealers' confirmations of all transactions placed by the investment adviser for any account, and such other broker-dealers' confirmations as may be supplied to the investment adviser by a client or broker-dealer.

Section 2. Every registered investment adviser shall preserve for a period of not less than three (3) years, the first two (2) years in an easily accessible place:

(1) All check books, bank statements, cancelled checks, and cash reconciliations;

(2) All bills or statements (or copies thereof) paid or unpaid, relating to the business of such investment adviser;

(3) Originals of all communications received and copies of all communications sent, pertaining to services rendered or to be rendered to its clients or customers by such investment adviser, other than interoffice or interdepartmental communications;

(4) All powers of attorney and other evidence of the granting of any discretionary authority in any account and copies of resolutions empowering an agent to act on behalf of any client;

(5) All written agreements (or copies thereof) entered into by an investment adviser relating to the business of such investment adviser including agreements with respect to any account, which agreements shall set forth the fees to be charged and the manner of computation and method of payment thereof.]

ARTHUR FREEMAN, Commissioner

COLLEEN KEEFE, Staff Attorney

APPROVED BY AGENCY: May 4, 1998

FILED WITH LRC: May 4, 1998 at 11 a.m.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Financial Institutions
(As Amended at ARRS, June 9, 1998)

808 KAR 10:130. Amendments to registration statement.

RELATES TO: KRS 292.360, 292.370 [Chapter 292]

STATUTORY AUTHORITY: KRS 292.500(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 292.500(3) authorizes the commissioner to promulgate administrative regulations necessary to carry out the provisions of KRS Chapter 292. KRS 292.360 and 292.370 establish requirements for filing a registration statement. This administrative regulation establishes requirements for an amendment to a registration statement filed pursuant to KRS 292.360 or 292.370. [To require that any and all changes in registration statements and amendments are clearly brought to the attention of department personnel.]

Section 1. An amendment to a registration statement [All amendments to statements] filed pursuant to KRS 292.360 or 292.370 shall be [underlined and otherwise] marked in a manner to show each change [where there are changes] from the last amendment filed.

ARTHUR FREEMAN, Commissioner

COLLEEN KEEFE, Staff Attorney

APPROVED BY AGENCY: March 12, 1998

FILED WITH LRC: March 13, 1998 at 11 a.m.

PUBLIC PROTECTION & REGULATION CABINET
Department of Financial Institutions
(As Amended at ARRS, June 9, 1998)

808 KAR 10:141. Repeal of 808 KAR 10:140, 808 KAR 10:190, 808 KAR 10:220, 808 KAR 10:230, 808 KAR 10:270

RELATES TO: KRS Chapter 292

STATUTORY AUTHORITY: KRS 292.500(3)

NECESSITY, FUNCTION, AND CONFORMITY: The administrative regulations are no longer required because their provisions are addressed in other administrative regulations or federal law has preempted or rendered the administrative regulations unnecessary.

Section 1. The following administrative regulations are hereby repealed:

(1) 808 KAR 10:140, Registration statements to be current;

(2) 808 KAR 10:190, Securities registration exemptions for certain business transactions;

(3) 808 KAR 10:220, Registration exemptions - NASDAQ/NMS exemption;

(4) 808 KAR 10:230, Fee payment - KRS 292.380(5); and

(5) 808 KAR 10:270, Registration exemption for securities listed on the Chicago Board Options Exchange. [808 KAR 10:140, 808 KAR 10:190, 808 KAR 10:220, 808 KAR 10:230, and 808 KAR 10:270 are repealed.]

ARTHUR FREEMAN, Commissioner

COLLEEN KEEFE, Staff Attorney

APPROVED BY AGENCY: March 12, 1998

FILED WITH LRC: March 13, 1998 at 11 a.m.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Financial Institutions
(As Amended at ARRS, June 9, 1998)

808 KAR 10:150. Registration exemptions.

RELATES TO: KRS 292.410(1)(g)

STATUTORY AUTHORITY: KRS 292.410(1)(g), 292.500(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 292.500(3) authorizes the commissioner to promulgate administrative regulations necessary to carry out the provisions of KRS Chapter 292. KRS 292.410(1)(g) authorizes the commissioner to exempt from KRS 292.330 to 292.390 a transaction for which the commissioner finds that registration is not necessary or appropriate in the public interest or for the protection of an investor. This administrative regulation establishes an exemption for a qualified professional service corporation from the requirements established in KRS 292.340 to 292.390. [To declare that registration is not necessary in the public interest for certain business transactions pursuant to KRS 292.410(1)(g).]

Section 1. (1) Pursuant to KRS 292.410(1)(g), a security that is issued by a professional service corporation, a professional limited liability company, or a professional limited liability partnership and that meets the requirements established in subsection (3) of this section shall:

(a) Be exempt from KRS 292.340 to 292.390; and

(b) Not be required to file a claim of exemption with the department.

(2) A person who receives a commission or other remuneration in connection with a sale made pursuant to the exemption established in subsection (1) of this section shall not be relieved of compliance with the requirements of KRS 292.330.

(3) The exemption established in subsection (1) of this section shall apply if:

(a) The security is issued by a professional service corporation organized under KRS Chapter 274 or substantially similar legislation enacted in another state, a professional limited liability company organized under KRS Chapter 275 or substantially similar legislation enacted in another state, or a profes-

sional limited liability partnership organized under KRS Chapter 362 or substantially similar legislation enacted in another state that [Pursuant to KRS 292.410(1)(q), the commissioner having found that registration under the Kentucky Securities Act is not necessary or appropriate in the public interest or for the protection of investors, securities issued under the following classes of transactions shall be exempt from KRS 292.340 to 292.390 and no claims of exemption need be filed with the department. However, any persons receiving commissions or other remuneration in connection with sales made pursuant to these exemptions are not relieved of compliance with the registration requirements of KRS 292.330.]

[(1) Small business organization. Where ten (10) or fewer persons organize a corporation, joint venture, or similar business organization other than a limited partnership, provided that:

- (a) There are no more than twenty-five (25) offerees;
- (b) The security acquired does not evidence an oil, gas or mineral interest;
- (c) Each person purchases with investment intent;
- (d) Each purchaser is an organizer on the date the issuer is formed;
- (e) Each purchaser has access to information concerning the issuer;
- (f) In connection with the organization, no commission or other remuneration is paid or given directly or indirectly to any person for soliciting any prospective buyer in this state;
- (g) No public advertising through newspapers, television, radio, handbills, or other such solicitation will be employed in effectuating the proposed transaction.

(2) [Professional service corporation. Any security issued by a professional service corporation organized under KRS Chapter 274 or substantially similar legislation of another state, or by a professional limited liability company or professional limited liability partnership, provided:

- [(1) [(a)] The professional service corporation or other entity] complies with the ownership and retransfer restrictions established by [set forth in the] applicable laws[(s)]; [KRS Chapter 274;]
- (b) The security is [(2) [(b)] The securities are] sold to a professional person;
- (c) [(3)] [(c)] The seller [must] reasonably believes [believe] that each buyer is purchasing for investment; and
- (d) [(4)] [(d)] Each professional is provided access to information concerning the professional service corporation or other entity.

ARTHUR FREEMAN, Commissioner
COLLEEN KEEFE, Staff Attorney
APPROVED BY AGENCY: March 12, 1998
FILED WITH LRC: March 13, 1998 at 11 a.m.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Financial Institutions
(As Amended at ARRS, June 9, 1998)

808 KAR 10:160. Definitions for 808 KAR Chapter 10.

RELATES TO: KRS Chapter 292

STATUTORY AUTHORITY: KRS 292.500(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 292.500(3) authorizes the commissioner to promulgate administrative regulations necessary to carry out the provisions of KRS Chapter 292. This administrative regulation establishes the definitions for terms used in 808 KAR Chapter 10. [To clarify and define terms used in KRS Chapter 292 and rules and administrative regulations promulgated thereunder.]

Section 1. Definitions. [When used in KRS Chapter 292 and the rules and administrative regulations promulgated thereunder unless the context otherwise requires:] (1) ["Assistant representative—order processing" means a person associated with a broker-dealer who accepts unsolicited customer orders for submission for execution by the broker-dealer and upon requests from customers provides market quotes:

- (2) "Current financial statement" means:

- (a) A balance sheet of the issuer as of a date within four (4) months prior to the filing of the claim of exemption;

- (b) A profit and loss statement audited by an independent, certified public accountant for the latest fiscal year presented for;

- 1. The three (3) fiscal years preceding the date of the balance sheet;

- 2. The [and for any] period between the close of the last fiscal year and the date of the balance sheet; or

- 3. [for] The period of the issuer's and its [any] predecessor's existence if less than three (3) years; or

- (c) If a [and, if any] part of the proceeds of the offering is to be applied to the purchase of a [any] business, the same financial statements that would be required if that business were the issuer. [The profit and loss statement shall be audited by an independent, certified public accountant for the latest fiscal year presented.]

- (2) [(3)] "Investment intent" or "purchasing for investment" means that:

- (a) The security shall:

- 1. Be kept by the purchaser as an investment without a disposition for a period of at least one (1) year;

- 2. Not be purchased with a view to, or for resale in connection with, a distribution; and

- 3. Not be disposed of if the security is not either registered or exempt from registration under KRS Chapter 292; and

- (b) The purchaser of the security:

- 1. Shall be prepared to bear the economic risk of the investment for an indefinite period of time; and

- 2. Has no need for liquidity of the investment. [securities cannot be purchased with a view to, or for resale in connection with, any distribution. Securities purchased with investment intent cannot be disposed of unless the securities are registered under KRS Chapter 292 or an exemption from the registration requirements of such chapter is available. As a result, the purchaser of these securities must be prepared to bear the economic risk of the investment for an indefinite period of time and have no need of liquidity of the investment. Where securities are purchased under KRS Chapter 292 for investment, investment intent shall be presumed if the purchaser retains such securities for one (1) year [two (2) years] from the date of consummation of the sale. However, any disposition of the securities within one (1) year [two (2) years] of the date of purchase, in the absence of an unforeseeable change of circumstances, shall create a presumption that the person did not purchase the securities with investment intent.]

- (3) [(4)] "Promotional company" means:

- (a) A corporation which does not have:

- 1. A [has no] substantial public market for its shares as evidenced by the number of market makers and the trading volume; and

- 2. [also has no] Significant earnings; or

- 1. A corporation which does not have:

- 1. A [has no] public market for its shares; and

- 2. [no] Justification for its proposed public offering price on the basis of past earnings.

- (4) [(5)] ["Subsidiary" means an affiliate controlled or significantly influenced by the issuer directly, or indirectly through one (1) or more intermediaries:

- (5) [(6)] "Significant subsidiary" means a subsidiary meeting [any] one (1) of the following conditions:

- (a) The assets of the subsidiary, or the investments in and advances to the subsidiary by the issuer and the issuer's other subsidiaries, if any, exceed ten (10) percent of the assets of the issuer and its subsidiaries on a consolidated basis;

- (b) The sales and operating revenues of the subsidiary exceed ten (10) percent of the sales and operating revenues of the issuer and its subsidiaries on a consolidated basis; or

- (c) The subsidiary is in control of or can significantly influence one (1) or more other subsidiaries and, together with those [such] subsidiaries would, if considered in the aggregate, constitute a significant subsidiary.

- (5) "Subsidiary" means an affiliate controlled or significantly influenced by the issuer directly or indirectly through one (1) or more intermediaries.

ARTHUR FREEMAN, Commissioner
COLLEEN KEEFE, Staff Attorney

APPROVED BY AGENCY: March 12, 1998
FILED WITH LRC: March 13, 1998 at 11 a.m.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Financial Institutions
(As Amended at ARRS, June 9, 1998)

808 KAR 10:170. Exemption claims from securities registration; form.

RELATES TO: KRS 292.400(9), (12), 292.415(1), 292.420(3)

STATUTORY AUTHORITY: KRS 292.415(1), 292.500(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 292.500(3) authorizes the commissioner to promulgate administrative regulations necessary to carry out the provisions of KRS Chapter 292. KRS 292.415(1) requires that before a security may be issued as an exempt security under KRS 292.400(9) or (12), a claim of exemption shall be filed with the commissioner in the form prescribed by the commissioner. This administrative regulation establishes the form and content of the claim of exemption that shall be filed in order to claim an exemption under KRS 292.400(9) or (12). [To outline the informational requirements and the format for a claim of exemption from securities registration under subsections (9) and (12) and (14) of KRS 292.400.]

Section 1. The following provisions shall apply to a matter [matters] relating to an exemption from registration pursuant to KRS 292.400(9).

(1) The claim of exemption required to be filed pursuant to KRS 292.415(1) shall contain the following:

(a) ~~The filing fee (payable to Kentucky State Treasurer);~~
(b) A declaration that the KRS 292.400(9) exemption shall [will] be relied upon;

(b) [(c)] A sample copy of the security that will be issued;
(c) [(d)] A copy of the Articles of Incorporation and Bylaws of the issuer or the equivalent governing instruments;

(d) [(e)] A prospectus, offering circular, or memorandum making full disclosure of material facts, including a discussion of all salient risk factors;

(e) [(f)] A representation that an offeree or purchaser [the offerees and purchasers] shall have access to information concerning the issuer;

(f) [(g)] Copies of all advertising or other material to be distributed in connection with the offering;

(g) [(h)] A copy of the subscription agreement or other similar agreement;

(h) [(i)] A copy of a [any] proposed agreement or proposed form of agreement with a securities broker-dealer or underwriter;

(i) [(j)] A copy of the preliminary or definitive Trust Indenture [and/or Trust Agreement, if any];

(j) 1. Except as provided in subparagraph 2 of this paragraph, an opinion of counsel:

a. Attesting to the authority of the issuer to offer and sell the security; and

b. Stating that after the sale the security shall be a valid, binding obligation of the issuer in accordance with the issuer's governing documents; or

2. A letter from an authorized officer or the governing body of the issuer if the commissioner, upon application for good cause shown, determines that the action is necessary or appropriate in the public interest, or for the protection of an investor; and [(k)] [An opinion of counsel attesting to the authority of the issuer to offer and sell the securities and stating that after the sale the securities will be valid, binding obligations of the issuer in accordance with the issuer's governing documents. A letter from an authorized officer or the governing body of the issuer may in certain circumstances be accepted in lieu of this opinion.]

(k) [(l)] A representation that a commission [any commissions] or other remuneration to be paid in connection with the offer or sale of the security shall [securities will] be paid to a person [only to persons] licensed pursuant to KRS 292.330.

(2) Upon application for good cause shown, and if the action is necessary or appropriate in the public interest, or for the protection of an investor, the commissioner may:

(a) Require additional information, documentation, or undertakings;

(b) Waive a requirement established in subsection (1) of this section; or

(c) Require that the name and address of each purchaser and the date of each purchase be submitted to complete the filing. [The commissioner may require additional information, documentation and undertakings or waive any of the above requirements. The commissioner may require that the name and address of each purchaser and date of each such purchase be submitted to complete the filing.]

(3) For a claim of exemption pursuant to KRS 292.400(9) for an offering of a security [securities] of a church or other religious institution, a proposed issuer shall [should] be in [substantial] compliance with the North American Securities Administrators Association's Guidelines for Offerings of Church Bonds relative to disclosure in offering circulars and financial condition (Commerce Clearing House Blue Sky Law Reporter).

Section 2. (1) In a matter relating to an exemption from registration pursuant to KRS 292.400(12), [The following provisions shall apply to matters relating to an exemption from registration pursuant to KRS 292.400(12):

(1) the claim of exemption required to be filed pursuant to KRS 292.415(1) shall contain the following:

(a) The filing fee of \$250 [100] (payable to Kentucky State Treasurer) as required by KRS 292.420(3);

(b) A declaration that the KRS 292.400(12) exemption shall [will] be relied upon;

(c) A sample copy of the security that will be issued;

(d) A copy of the articles of incorporation and bylaws of the issuer or the equivalent governing instruments;

(e) A prospectus, offering circular, or memorandum making full disclosure of material facts, including a discussion of all salient risk factors;

(f) A representation that an offeree or purchaser [the offerees and purchasers] shall have access to information concerning the issuer;

(g) Current financial statements of the issuer;

(h) A copy of the subscription agreement or other similar agreement;

(i) A statement as to how the proceeds of the issue will be used; and

(j) A representation that a [any] commission or other remuneration to be paid in connection with the offer or sale of the security shall [securities will] be paid to a person [only to persons] licensed pursuant to KRS 292.330.

(2) Upon application for good cause shown, and if the action is necessary or appropriate in the public interest, or for the protection of an investor, the commissioner may:

(a) Require additional information or documentation;

(b) Waive a requirement established in subsection (1) of this section; or

(c) Require that the name and address of each purchaser and the date of each purchase be submitted to complete the filing.

Section 3. Incorporation by Reference. (1) The North American Securities Administrators Association's Guidelines for Offerings of Church Bonds, CCH NASAA Reports, paragraphs 1001-1005, 1981 edition, is incorporated by reference.

(2) It may be inspected, copied, or obtained at the Department of Financial Institutions, 477 Versailles Road, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. [The commissioner may require additional information and documentation or waive any of the above requirements. The commissioner may require that the name and address of each purchaser and the date of each such purchase be submitted to complete the filing.]

[Section 3. The following provisions shall apply to matters relating to an exemption from registration pursuant to KRS 292.400(14):

(1) The claim of exemption required to be filed pursuant to KRS 292.415(1) shall contain the following:

(a) The filing fee of \$100 (payable to Kentucky State Treasurer);

(b) A declaration that the KRS 292.400(14) exemption will be relied upon; and

(c) A declaration as to how the issuer satisfies each of the specific requirements of KRS 292.400(14), which declaration shall be signed by a principal officer of the issuer.

(2) The commissioner may require additional information, documentation or undertakings to be filed.

(3) The exemption shall be available for a period of five (5) years unless material changes regarding the issuer which relate to the statutory requirements of the exemption make the exemption unavailable. The \$100 filing fee shall be waived for the last four (4) years of the exemption period.

(4) The issuer will notify the commissioner annually (approximately one (1) year from the effective date of the exemption) that the conditions of the exemption are still being complied with and that the issuer is still relying upon and claiming the exemption.

(5) If the exemption becomes unavailable at any time as a result of material changes affecting the issuer's statutory exemption, the issuer shall immediately notify the commissioner.]

ARTHUR FREEMAN, Commissioner

COLLEEN KEEFE, Staff Attorney

APPROVED BY AGENCY: March 12, 1998

FILED WITH LRC: March 13, 1998 at 11 a.m.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Financial Institutions
(As Amended at ARRS, June 9, 1998)

808 KAR 10:200. Investment advisers' minimum liquid capitalization; bond.

RELATES TO: KRS 292.330(6), (7) [(5)]

STATUTORY AUTHORITY: KRS 292.330(6), (7), 292.500(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 292.500(3) authorizes the commissioner to promulgate administrative regulations necessary to carry out the provisions of KRS Chapter 292. KRS 292.330(6) authorizes the commissioner to require a minimum liquid net capital for investment advisers. KRS 292.330(7) authorizes the commissioner to require an investment adviser to post a surety bond in an amount up to \$25,000 and to determine the conditions of the bond. This administrative regulation establishes the requirements for minimum liquid capitalization and bonding for an investment adviser.

Section 1. (1) Except as provided in subsections (2) and (3) of this section, an investment adviser registered or required to register pursuant to KRS Chapter 292 shall maintain a minimum net worth of:

(a) \$35,000, if he has custody of a client fund or security; or

(b) \$10,000, if he:

1. Has discretionary authority over a client fund or security; and

2. Does not have custody of the client fund or security.

(2) An investment adviser who has custody of or discretionary authority over a client fund or security shall:

(a) Maintain the minimum net worth as required by subsection (1) of this section; or

(b) Be bonded;

1. In an amount of not more than \$25,000 determined by the commissioner based upon the number of clients and the total assets under management of the investment adviser; and

2. By a bonding company qualified to do business in Kentucky.

(3) An investment adviser that maintains his principal place of business in a state other than Kentucky shall be exempt

from the requirements established in subsections (1) and (2) of this section if the investment adviser is:

(a) Registered in his home state; and

(b) In compliance with the state's net capital and bonding requirements. [To protect the public interest by establishing a minimum liquid capitalization for investment advisers:

Section 1. (1) Unless an investment adviser posts a bond pursuant to subsection (2) of this section, an investment adviser registered or required to be registered under the Act who has custody of client funds or securities shall maintain at all times a minimum net worth of \$35,000, and every investment adviser registered or required to be registered under the Act who has discretionary authority over client funds or securities but does not have custody of client funds or securities, shall maintain at all times a minimum net worth of \$10,000.

(2) Every investment adviser having custody of or discretionary authority over client funds or securities shall be bonded in an amount of not less than \$35,000 determined by the commissioner based upon the number of clients and the total assets under management of the investment adviser by a bonding company qualified to do business in Kentucky. The requirements of this administrative regulation shall not apply to those applicants or registrants who comply with the requirements of subsection (1) of this section.

(3) The provisions of this administrative regulation shall not apply to any investment adviser that maintains its principal place of business in a state other than Kentucky provided such investment adviser is registered in its home state and in compliance with such state's net capital and bonding requirements, if any.] [The minimum liquid net capital to be maintained by an investment adviser shall be \$5,000 unless the investment adviser charges prepaid fees or has custody of client funds, in which case the minimum liquid net capital to be maintained by such investment adviser shall be \$20,000.

Section 2. The minimum capitalization established in Section 1 of this administrative regulation may be reduced or waived by the commissioner upon a showing that such minimum capitalization is not necessary in the public interest given the limited nature of the adviser's activities.]

ARTHUR FREEMAN, Commissioner

COLLEEN KEEFE, Staff Attorney

APPROVED BY AGENCY: March 12, 1998

FILED WITH LRC: March 13, 1998 at 11 a.m.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Financial Institutions
(As Amended at ARRS, June 9, 1998)

808 KAR 10:210. Registration exemptions - Federal Regulation D.

RELATES TO: KRS 292.410(1)(g), 17 CFR 230.262, 230.501, 230.504, 230.505, 230.508, 239.500 [(1992) 252(c) (d) (e) (f) (1956)]; 230.504-505 [505-506] (1982), 230.508(a) (1989), as amended or made effective by Release Nos. 33-6389 (April 15, 1982), 33-6437 (December 4, 1982), 33-6663 (November 10, 1986), 33-6758 (April 11, 1988), 33-6825 (April 19, 1989)]

STATUTORY AUTHORITY: KRS 292.500(3), 17 CFR 230.262, 230.501, 230.504, 230.505, 230.508

NECESSITY, FUNCTION, AND CONFORMITY: KRS 292.500(3) authorizes the commissioner to promulgate administrative regulations necessary to carry out the provisions of KRS Chapter 292. KRS 292.410(1)(g) authorizes the commissioner to exempt from KRS 292.330 to 292.390 a transaction for which the commissioner finds that registration is not necessary or appropriate in the public interest or for the protection of an investor. This administrative regulation establishes an exemption for an offer or sale of a security that complies with specified federal regulations and the requirements established in the administrative regulation.

Section 1. (1) Pursuant to KRS 292.410(1)(q), an offer or sale of a security offered or sold in compliance with 17 CFR 230.504 or 230.505, or an offer or sale made exempt by 17 CFR 230.508(a) shall be exempt from KRS 292.340 to 292.390 if the offer or sale meets the requirements established in subsections (3) and (4) of this section.

(2) A person who receives a commission, finder fee, or other remuneration in connection with a sale of a security made pursuant to the exemption established in subsection (1) of this section shall not be relieved of compliance with the requirements of KRS 292.330.

(3) The exemption established in subsection (1) of this section shall apply if:

(a) [To declare that registration is not necessary in the public interest for certain business transactions pursuant to KRS 292.410(1)(q):

Section 1. The following federal regulations and releases are adopted without change: 17 CFR 230.262 (1992), 230.501, 504-505 [230.252(c) (d) (e) (f) (1956), 230.505-506] (1982), 230.508(a) (1989), as amended or made effective by Release Nos. 33-6389 (April 15, 1982), 33-6437 (December 4, 1982), 33-6663 (November 10, 1986), 33-6758 (April 11, 1988), and 33-6825 (April 19, 1989)

Section 2. Pursuant to KRS 292.410(1)(q), the commissioner, having found that registration is not necessary or appropriate in the public interest or for the protection of investors, exempts the transaction in subsection (1) of this section [the following transaction is determined to be exempt] from the registration provisions of KRS 292.340 through KRS 292.390.

(1) Any offer or sale of securities offered or sold in compliance with Securities Act of 1933, Regulation D, either 230.504 or 230.505 [230.505 or 230.506], including any offer or sale made exempt by application of Rule 508(a), as made effective in Release No. 33-6389 and as amended in Release Nos. 33-6437, 33-6663, 33-6758, 33-6825 and which satisfies the following further conditions and limitations:

(a) Persons receiving commissions, finders fees, or other remuneration in connection with sales of securities in reliance on this administrative regulation are not relieved of compliance with KRS 292.330.

(b) [The issuer does not offer or sell the security [securities] by means of a form of general advertisement or general solicitation. The following shall not constitute "general solicitation" within the meaning of this paragraph [section]:

1. Solicitation of an indication [indications] of interest in accordance with the applicable [such] terms and conditions [as the commissioner may adopt by administrative regulation]; or

2. An offer to sell a security [Offers to sell securities] and the dissemination of written offering material [materials] in accordance with the terms of this administrative regulation at least thirty (30) days after the withdrawal of an application by the issuer to register the same class of securities;

(b)1. [(c)] The issuer reasonably believes that each purchaser of the securities in Kentucky is:

**a. Acquiring the security [securities] for investment; and
b. [Is] Aware of the [any] restrictions imposed on transferability and resale of a security [the securities].**

2. The basis for reasonable belief may include:

a. [1.] Obtaining a written representation signed by the purchaser that the purchaser is acquiring the security [securities] for the purchaser's own investment and is aware of the [any] restrictions imposed on the transferability and resale of the security [securities]; and

b. [2.] Placement of a legend on the certificate or other document that evidences the security [securities] stating that the security [securities] have not been registered under KRS Chapter 292, and setting forth or referring to the restrictions on transferability and sale of security [securities].

[(d) No exemption under this rule shall be available for the securities of any issuer, if any of the parties or persons described in Securities Act of 1933, Regulation A, Rule 230.262 [230.252, Sections (c), (d), (e) or (f):

1. Has filed a registration statement which is the subject of a currently effective stop order entered pursuant to any federal or state law within five (5) years prior to the commencement of the offering;

2. Has been convicted within five (5) years prior to commencement of the offering of any felony or misdemeanor in connection with the purchase or sale of any security or any felony involving fraud or deceit including but not limited to forgery, embezzlement, obtaining money under false pretenses, larceny or conspiracy to defraud;

3. Is currently subject to any federal or state administrative order or judgment entered by that state's securities administrator within five (5) years prior to reliance on this exemption or is subject to any state's administrative order or judgment in which fraud or deceit was found and the order or judgment was entered within five (5) years of the expected offer and sale of securities in reliance upon this exemption;

4. Is currently subject to any state's administrative order or judgment which prohibits the use of any exemption from registration in connection with the purchase or sale of securities;

5. Is subject to any order, judgment or decree of any court of competent jurisdiction temporarily or preliminarily restraining or enjoining, or is subject to any order, judgment or decree of any court of competent jurisdiction, entered within five (5) years prior to the commencement of the offering permanently restraining or enjoining, such person from engaging in or continuing any conduct or practice in connection with the purchase or sale of any security or involving the making of any false filing with any state;

6. The prohibitions of subparagraphs 1, 2, [through] 3 and 5 of this paragraph shall not apply if the person subject to the disqualification is duly licensed or registered to conduct securities-related business in the state in which the administrative order or judgment was entered against such person or if the broker/dealer employing such person is licensed or registered in this state and the Form BD filed with this state discloses the order, conviction, judgment or decree relating to such person;

7. Any disqualification caused by this section is automatically waived if the state which created the basis for disqualification determines upon a showing of good cause that it is not necessary under the circumstances that the exemption be denied. It is a defense to a violation of this subsection if issuer sustains the burden of proof to establish that he or she did not know and in the exercise of reasonable care could not have known that a disqualification under the subsection existed;]

(c)1. [(e)] [(e)] The issuer shall file with the department [of Financial Institutions] a notice on Form D (17 CFR 239.500);

a. No later than fifteen (15) days after the first sale of a security [securities] from or into Kentucky [this state] in the case of a transaction pursuant to 17 CFR 230.505; or

b. [Rule 505, or] At least ten (10) business days prior to the first sale of a security [securities] from or into Kentucky [this state] in the case of a transaction pursuant to 17 CFR 230.504.

2. During the time specified in subparagraph 1 of this paragraph, [Rule 504 during which time] the department shall not have determined that the exemption provided by this administrative regulation is not available, [or to an investor in this state which results from an offer being made in reliance upon this exemption;]

3. A [1-Every] notice on Form D shall be manually signed by a person duly authorized by the issuer.

4.a. [2-Any] Information furnished by the issuer to an offeree [offerees] shall be filed with the notice required by subparagraph 1 of this paragraph.

b. If the information is altered in a [pursuant to this paragraph and, if such information is altered in any] material way during the course of the offering, the department [of Financial Institutions] shall be notified of the [such] amendment within fifteen (15) days after an offer using the [such] amended information.

5. [3-] At the time of filing of the notice on Form D, the issuer shall pay to the commissioner a filing fee of \$250. [There is no filing fee;]

6. If [4- In the event that] the issuer files an [any] additional document [documents] with the United States Securities and Exchange Commission subsequent to its initial filing, a copy of the document [copies of same] shall be filed with the department [of Financial Institutions].

(d)1. An issuer selling a security in reliance on this exemption furnishes written information to a prospective investor to

comply with the antifraud provisions of KRS Chapter 292 and applicable federal law.

2. In an offering in reliance on 17 CFR 230.504 to a person who is not an accredited investor, the department shall consider the information provided to a prospective investor in determining whether the exemption established by this administrative regulation is available; and

(e) In a sale to a nonaccredited investor pursuant to 17 CFR 230.504, the issuer and a

~~[(f) Issuers selling securities in reliance on this administrative regulation should consider furnishing written information to prospective investors in view of the antifraud provisions of this chapter and federal securities laws. In any offering in reliance on Rule 504 to persons who are not accredited investors, the department may consider the information to be provided to prospective investors in determining whether the exemption provided by this administrative regulation is available;~~

~~(g) [(d)] In all sales to nonaccredited investors pursuant to Rule 504 a [the] person acting on his [its] behalf shall have reasonable grounds to believe, and after making reasonable inquiry shall believe, that [both of the following conditions are satisfied:~~

~~1. The investment is suitable for the purchaser upon the basis of the facts, if any, disclosed by the purchaser as to his other security holdings and as to his financial situations and needs. For the limited purpose of this condition only, it may be presumed that if the investment does not exceed ten (10) percent of the investor's net worth, it is suitable;~~

~~2. [the purchaser either alone or with his [or her] [his/her] purchaser representative[s]] has the [such] knowledge and experience in financial and business matters that he [or she] [he/she] is [or they are] capable of evaluating the merits and risk of the prospective investment.~~

~~(4)(a) Except as provided in paragraph (b) of this subsection, the exemption established in subsection (1) of this section shall not apply if the issuer or a person described in 17 CFR 230.262:~~

~~1. Has filed a registration statement which is the subject of a currently effective stop order entered pursuant to a federal or state law within five (5) years prior to the commencement of the offering;~~

~~2. Has been convicted within five (5) years prior to commencement of the offering of a felony or misdemeanor in connection with the purchase or sale of a security or a felony involving fraud or deceit including forgery, embezzlement, obtaining money under false pretenses, larceny or conspiracy to defraud;~~

~~3. Is currently subject to a federal or state administrative order or judgment entered by that state's securities administrator within five (5) years prior to reliance on this exemption or is subject to a state's administrative order or judgment in which fraud or deceit was found and the order or judgment was entered within five (5) years of the expected offer and sale of a security in reliance upon this exemption;~~

~~4. Is currently subject to a state's administrative order or judgment which prohibits the use of an exemption from registration in connection with the purchase or sale of a security; or~~

~~5. Is subject to an order, judgment or decree of a court of competent jurisdiction temporarily or preliminarily restraining or enjoining, or is subject to an order, judgment or decree of a court of competent jurisdiction, entered within five (5) years prior to the commencement of the offering permanently restraining or enjoining, the person from engaging in or continuing a conduct or practice in connection with the purchase or sale of a security or involving the making of a false filing with a state.~~

~~(b) The prohibitions of paragraph (a)1, 2, 3 and 5 of this subsection shall not apply if:~~

~~1. The person subject to the disqualification is duly licensed or registered to conduct securities related business in the state in which the administrative order or judgment was entered against the person; or~~

~~2. The broker-dealer employing the person is licensed or registered in Kentucky and the Form BD filed with Kentucky~~

~~discloses the order, conviction, judgment or decree relating to the person.~~

~~(c) A disqualification pursuant to paragraph (a) of this subsection shall be automatically waived if the state which created the basis for disqualification determines upon a showing of good cause that it is not necessary under the circumstances that the exemption be denied.~~

~~(d) It shall be a defense to a violation of paragraph (a) of this subsection if the issuer sustains the burden of proof to establish that he did not know, and in the exercise of reasonable care could not have known, that a disqualification under paragraph (a) of this subsection existed.~~

~~(5) [(2)] A failure to comply with a term, condition or requirement established in subsection (2) or (3)(c) or (d) of this section shall [of subsection (1)(a), (e) and (f) [(c) and (d)] of this section will] not result in loss of the exemption for a [any] new offer or sale to a particular individual or entity if the person relying on the exemption shows:~~

~~(a) The failure to comply did not pertain to a term, condition or requirement directly intended to protect that particular individual or entity; [and]~~

~~(b) The failure to comply was insignificant with respect to the offering as a whole; and~~

~~(c) A good faith and reasonable attempt was made to comply with all applicable terms, conditions and requirements of [subsection (1)(a); (c) and (d)] of this section.~~

~~(6) If [(3) Where] an exemption is established only through reliance upon subsection (5) [(2)] of this section, the failure to comply shall [nonetheless] be actionable by the commissioner.~~

~~(7)(a) An offer or sale which is exempt pursuant to this administrative regulation shall not be combined with an offer or sale exempt under another administrative regulation or KRS Chapter 292.~~

~~(b) If an offer or sale fails to comply with all the conditions for this exemption, the issuer may claim the availability of another applicable exemption.~~

~~(8) This exemption shall not relieve an issuer or a person acting on behalf of an issuer from the requirement to provide disclosure to a prospective investor to satisfy the antifraud provisions established within KRS Chapter 292.~~

~~[(4) Offers and sales which are exempt under this rule may not be combined with offers and sales exempt under any other rule or section of this Act, however, nothing in this limitation shall act as an election. Should for any reason the offers and sales fail to comply with all of the conditions for this exemption, the issuer may claim the availability of any other applicable exemption.~~

~~(5) Nothing in this exemption is intended to or should be construed as in any way relieving issuers or persons acting on behalf of issuers from providing disclosure to prospective investors adequate to satisfy the antifraud provisions of this state's securities law.]~~

~~(9) In a [(6) In any] proceeding involving this administrative regulation [rule], the burden of proving the exemption or an exception from a definition or condition shall be [is] upon the person claiming it.~~

~~(10) The exemption established in this administrative regulation shall not be available to an issuer for a transaction which is:~~

~~(a) In technical compliance with the requirements of this administrative regulation; and~~

~~(b) Part of a plan or scheme to evade registration or the requirements of this administrative regulation.~~

Section 2. Adoption Without Change. The offer or sale of a security offered or sold pursuant to Federal Regulation D is governed by:

(1) 17 CFR 230.262, August 13, 1992;

(2) 17 CFR 230.501, March 20, 1989;

(3) 17 CFR 230.504, June 14, 1996;

(4) 17 CFR 230.505, August 13, 1992; and

(5) 17 CFR 230.508, August 13, 1992.

Section 3. Incorporation by Reference. (1) Form B-D, "Application for Registration as Broker-Dealer", July 1988 edition, is incorporated by reference.

(2) It may be inspected, copied, or obtained at the Department of Financial Institutions, 477 Versailles Road, Frankfort, Kentucky, 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

(3) A copy may also be obtained from the National Association of Securities Dealers (NASD), 1735 K Street, N.W., Washington, D.C., 20006, or a regional NASD office.

[(7) In view of the objective of this rule and the purpose and policies underlying the securities act, the exemption is not available to any issuer with respect to any transaction which, although in technical compliance with this rule, is part of a plan or scheme to evade registration or the conditions or limitations explicitly stated in this rule.]

ARTHUR FREEMAN, Commissioner

COLLEEN KEEFE, Staff Attorney

APPROVED BY AGENCY: March 12, 1998

FILED WITH LRC: March 13, 1998 at 11 a.m.

PUBLIC PROTECTION AND REGULATION CABINET

Department of Financial Institutions

(As Amended at ARRS, June 9, 1998)

808 KAR 10:240. Registration exemptions - sale of business.

RELATES TO: KRS 292.410(1)(q)

STATUTORY AUTHORITY: KRS 292.410(1)(q), [13A:350:] 292.500(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 292.500(3) authorizes the commissioner to promulgate administrative regulations necessary to carry out the provisions of KRS Chapter 292. KRS 292.410(1)(q) authorizes the commissioner to exempt from KRS 292.330 to 292.390 a transaction for which the commissioner finds that registration is not necessary or appropriate in the public interest or for the protection of an investor. This administrative regulation establishes an exemption for a sale of a business that meets the specified requirements.

Section 1. Pursuant to KRS 292.410(1)(q), the offer or sale of 100 percent of the ownership interest in a corporation shall be exempt from the requirements established in KRS 292.330 to 292.390 if:

(1) 100 percent of the stock of the corporation is either offered or sold; and

(2) The stock is sold to one (1) individual or preexisting entity. [To declare that registration is not necessary in the public interest for certain business transactions pursuant to KRS 292.410(1)(q):

Section 1. Pursuant to KRS 292.410(1)(q), the commissioner having found that registration is not necessary or appropriate in the public interest or for the protection of investors, the following class of transactions is determined to be exempt from the registration provisions of KRS 292.330 through 292.390: the offer or sale of 100 percent of the ownership interest in any corporation provided that:

(1) No less than 100 percent of the stock of the corporation is either offered or sold; and

(2) The stock is sold to no more than one (1) individual or preexisting entity.]

ARTHUR FREEMAN, Commissioner

COLLEEN KEEFE, Staff Attorney

APPROVED BY AGENCY: March 12, 1998

FILED WITH LRC: March 13, 1998 at 11 a.m.

PUBLIC PROTECTION AND REGULATION CABINET

Department of Financial Institutions

(As Amended at ARRS, June 9, 1998)

808 KAR 10:260. Examination requirement for individuals advising the public on securities, broker-dealers, and agents.

RELATES TO: KRS 292.310, 292.330(4), (13)(b)6, 292.500(3)

STATUTORY AUTHORITY: KRS 292.330(4), (13) [(12)] (b)6, 292.500(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 292.330(4) and (13) [(12)] (b)6 authorize the commissioner to require an examination as evidence of knowledge of the securities business as a condition of registration. This administrative regulation requires an individual who advises the public regarding securities to successfully complete a written examination that demonstrates knowledge of the requirements of the securities laws and exempts certain individuals from the examination requirement.

Section 1. Except as provided in Section 2 of this administrative regulation, an individual, including an investment adviser or an investment adviser representative, who advises the public regarding the value of a security [securities] or the advisability of investing in, purchasing, or selling a security [securities] shall:

(1) Demonstrate competence in the law of securities by taking and passing with a minimum score of seventy (70) percent one (1) of the following examinations administered by the National Association of Securities Dealers:

(a) The Series 63 Uniform Securities Law Examination;

(b) [administered by the National Association of Securities Dealers:] The Series 65 Uniform Investment Advisor Law Examination; or

(c) [administered by the National Association of Securities Dealers; or] The Series 66 Uniform Combined State Law Examination; and

(2) [administered by the National Association of Securities Dealers. Each individual who takes the exam shall] Provide to the commissioner a copy of the notification from the National Association of Securities Dealers informing him of his score on the examination.

Section 2. The following individuals shall not be required to take and pass the examination:

(1) An individual who has been employed continuously since on or before July 1, 1991, by an investment adviser who has been registered in Kentucky continuously since on or before July 1, 1991;

(2) An individual (including an officer, partner, director, or clerical staff) employed by a registered investment adviser if the individual does not advise the public regarding the value of a security [securities] or the advisability of investing in, purchasing, or selling a security [securities];

(3) An investment adviser who is exempt from registration under KRS 292.330(1); or

(4) [and] An individual employed by an [the exempted] investment adviser who is exempt from registration under KRS 292.330(1).

Section 3. A registered investment adviser shall not employ an individual as an investment adviser or as one who represents an investment adviser unless that individual has complied with this administrative regulation.

Section 4. To register in Kentucky as a broker-dealer or agent, an individual or a principal, if the applicant is a corporation, shall: [An individual or a principal in the case of a corporation, as a condition of Kentucky registration as a broker-dealer or agent, shall:]

(1) Pass one (1) of the following National Association of Securities Dealers ("NASD") examinations: Series 1, 2, 6, 7, 11, 17, 22, 24, 26, 39, 40, 52, 53, or 62; and

(2) Pass the NASD Series 63 or Series 66 examination.

ARTHUR FREEMAN, Commissioner

COLLEEN KEEFE, Staff Attorney

APPROVED BY AGENCY: March 12, 1998

FILED WITH LRC: March 13, 1998 at 11 a.m.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Financial Institutions
(As Amended at ARRS, June 9, 1998)

808 KAR 10:300. Registration exemptions - pension plans.

RELATES TO: KRS 292.330-292.390, 292.395, 292.400(11), 292.410(1)(q), 17 CFR 230.701

STATUTORY AUTHORITY: KRS 292.400(11), 292.410(1)(q), 292.500(1), (3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 292.400(11) exempts from the registration requirements of KRS 292.340 to 292.390 an investment contract issued in connection with certain employee benefit plans, but not the securities in the plan. KRS 292.410(1)(q) exempts from the registration requirements of KRS 292.330 to 292.390 a transaction for which the commissioner finds registration is not necessary or appropriate in the public interest or for the protection of investors. This administrative regulation exempts an offer or sale of a security within the above-referenced employee benefit plans from the registration requirements.

Section 1. (1) The registration provisions of KRS 292.330 to 292.390 and the notice filing provisions of KRS 292.395 shall not apply to an offer or sale of a security by an issuer pursuant to a written compensatory benefit plan including, without limitation, a purchase, savings, option, bonus, stock appreciation, profit sharing, thrift, incentive, pension or similar plan, or an interest in a plan, if the offer or sale qualifies for the registration exemption of 17 CFR 230.701.

(2) In order to provide an exemption from the registration requirements of KRS 292.330 to 292.390 and from the notice filing provisions of KRS 292.395 for a security issued in an employee compensatory circumstance, this exemption shall not apply to a plan or scheme to circumvent that purpose, including one to raise capital. In those cases, registration or another [some other] exemption from registration shall be required.

(3) A filing with the department shall not be necessary to claim the exemption.

ARTHUR FREEMAN, Commissioner
 COLLEEN KEEFE, Staff Attorney

APPROVED BY AGENCY: March 12, 1998

FILED WITH LRC: March 13, 1998 at 11 a.m.

PUBLIC PROTECTION & REGULATION CABINET
Department of Financial Institutions
(As Amended at ARRS, June 9, 1998)

808 KAR 10:310. Broker-dealer agent de minimis rules.

RELATES TO: KRS 292.310(1)(a)2, 292.330, 15 USC 78o(h)(2),

(3)

STATUTORY AUTHORITY: KRS 292.500(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 292.500(3) authorizes the commissioner to promulgate administrative regulations necessary to carry out the provisions of KRS Chapter 292. KRS 292.310(1)(a)2 provides that the term "agent" shall not include an individual who represents a broker-dealer in effecting a transaction described in 15 USC 78o(h)(2). 15 USC 78o(h)(2) establishes the federal prohibition for a de minimis transaction by an agent and 15 USC 78o(h)(3) defines a described transaction. This administrative regulation establishes an exemption from the registration requirements established in KRS 292.330 for an agent of a broker-dealer if the agent is engaged in a described transaction. [To exempt agents of broker-dealers from the registration requirement when the agents only engage in certain described transactions in Kentucky.]

Section 1. An agent of a broker-dealer who engages in a described transaction pursuant to Section 2 of this administrative regulation shall be exempt from the registration requirements established in KRS 292.330 if: [Registration shall not be required for

agents of broker-dealers who engage in "described transactions" as such term is defined in Section 2 of this administrative regulation, if:]

(1) The agent is not ineligible to register in Kentucky for a [any] reason other than engaging in the described transaction;

(2) The agent is registered with a registered securities association and at least one (1) state; and [or]

(3) The broker-dealer with which the agent is employed is registered with the state identified in subsection (2) of this section [that same state in subsection (2) of this section].

Section 2. Described Transactions. (1) A transaction shall be considered [is] a described transaction [for purposes of this provision] if:

(a) The transaction is effected:

1. On behalf of a customer that, for thirty (30) days prior to the day of the transaction, maintained an account with the broker-dealer; and

2. By an agent of the broker-dealer:

a. To which the customer was assigned for fourteen (14) days prior to the day of the transaction; and

b. Who is registered with a state in which the customer was a resident or was present for at least thirty (30) consecutive days during the one (1)-year period prior to the day of the transaction; or

(b) The transaction is effected:

1. On behalf of a customer that, for thirty (30) days prior to the day of the transaction, maintains an account with the broker-dealer; and

2. During the period beginning on the date on which the agent files an application for registration with the Commonwealth of Kentucky and ending on the earlier of:

a. Sixty (60) days after the date on which the application is filed; or

b. The date on which the department notifies the agent that it has denied the application for registration or has stayed or suspended the pendency of the application for cause.

(2) For purposes of subsection (1)(a)2 of this section:

(a) Each of up to three (3) agents of a broker-dealer who are designated to effect transactions during the absence or unavailability of the principal agent for a customer may be treated as an agent to which the customer is assigned; and

(b) If the customer is present in another state for thirty (30) or more consecutive days or has permanently changed his or her residence to another state, a transaction shall not be considered [is not] described in this paragraph, unless the agent of the broker-dealer files an application for registration with the other state not later than ten (10) business days after the later of the date of the transaction, or the date of the discovery of the presence of the customer in the other state for thirty (30) or more consecutive days or the change in the customer's residence.

ARTHUR FREEMAN, Commissioner
 COLLEEN KEEFE, Staff Attorney

APPROVED BY AGENCY: March 12, 1998

FILED WITH LRC: March 13, 1998 at 11 a.m.

PUBLIC PROTECTION & REGULATION CABINET
Department of Financial Institutions
(As Amended at ARRS, June 9, 1998)

808 KAR 10:320. Broker-dealer books and records requirements.

RELATES TO: KRS 292.330(12)(a), 17 CFR 240.17a-3, 240.17a-4, 15 USC 78q [Chapter 292]

STATUTORY AUTHORITY: KRS 292.330(12) [(11)] (a), 292.500(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 292.500(3) authorizes the commissioner to promulgate administrative regulations necessary to carry out the provisions of KRS Chapter 292. KRS 292.330(12)(a) requires a registered broker-dealer to make and keep records required by the commissioner. This administrative regulation establishes the recordkeeping requirements for a broker-dealer.

VOLUME 25, NUMBER 1 – JULY 1, 1998

Section 1. (1) Pursuant to KRS 292.330(12)(a), a broker-dealer shall:

(a) Meet the recordkeeping requirements established in 15 USC 78q; and

(b) Maintain his books and records in accordance with the applicable federal regulations, including 17 CFR 240.17a-3 and 17 CFR 240.17a-4.

(2) The requirements established in subsection (1) of this section shall apply to a broker-dealer subject to the provisions of KRS Chapter 292.

(3) The commissioner may upon application for good cause shown relieve a broker-dealer of compliance with the requirements established in subsection (1) of this section if the action is necessary or appropriate in the public interest; or for the protection of an investor. [To insure that all broker-dealers maintain sufficient records for the efficient operation of their business and for the protection of their clients:

Section 1. Pursuant to KRS 292.330(12)(a), all broker-dealers shall meet the recordkeeping requirements of Section 17(a) of the Securities Exchange Act of 1934 (15 USC 78q), and maintain their books and records in accordance with the rules enacted thereunder by the United States Securities and Exchange Commission. Such rules, which are expressly incorporated by reference as if set out herein, shall include but not necessarily be limited to 17 CFR 240.17a-3 and 240.17a-4. This administrative regulation shall apply to broker-dealers subject to the Securities Act of Kentucky regardless of whether they are subject to the Securities Exchange Act of 1934 (15 USC 78q). The commissioner may upon application for good cause shown relieve a broker-dealer of compliance with this administrative regulation in part, but only if such action is necessary or appropriate in the public interest or for the protection of investors.]

ARTHUR FREEMAN, Commissioner

COLLEEN KEEFE, Staff Attorney

APPROVED BY AGENCY: March 12, 1998

FILED WITH LRC: March 13, 1998 at 11 a.m.

PUBLIC PROTECTION & REGULATION CABINET
Department of Financial Institutions
(As Amended at ARRS, June 9, 1998)

808 KAR 10:330. Notice filing requirements for covered advisers.

RELATES TO: KRS 292.330(2), (11)(b) [Chapter 292]

STATUTORY AUTHORITY: KRS 292.330(2)(a), 292.500(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 292.500(3) authorizes the commissioner to promulgate administrative regulations necessary to carry out the provisions of KRS Chapter 292. KRS 292.330(2)(a) requires a covered adviser to file with the commissioner a copy of the documents filed with the United States Securities and Exchange Commission and that the commissioner requires to be filed together with a consent to service of process and the fee required by KRS 292.330(11)(b). This administrative regulation establishes the notice filing requirements for a covered adviser doing business in Kentucky. [To provide for notice filing by covered advisers doing business in Kentucky who otherwise need not register with the department:]

Section 1. (1) A covered adviser, except a person that is exempt from the notice filing requirements pursuant to KRS 292.330(2)(b), (c), or (d), doing business in this state shall file with the department for notice purposes:

(a) A copy of Form ADV and each [any] additional document [documents] filed with the United States Securities and Exchange Commission;

(b) A consent to service of process; and

(c) The \$200 [and a] filing fee required by KRS 292.330(11)(b).

(2) [for same in the amount of \$200.] A covered adviser shall file with the department a copy of an amendment [any amendments] to

the covered adviser's Form ADV when the amendment is [as and when such amendments are] filed with the Securities and Exchange Commission.

Section 2. Incorporation by Reference. (1) Form ADV, "Application for Registration of an Investment Adviser", May 31, 1997 edition, United States Securities and Exchange Commission, is incorporated by reference.

(2) It may be inspected, copied, or obtained at the Department of Financial Institutions, 477 Versailles Road, Frankfort, Kentucky, 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

(3) A copy may also be obtained from the National Association of Securities Dealers (NASD), 1735 K Street, N.W., Washington, D.C., 20006, or a regional NASD office.

ARTHUR FREEMAN, Commissioner

COLLEEN KEEFE, Staff Attorney

APPROVED BY AGENCY: March 12, 1998

FILED WITH LRC: March 13, 1998 at 11 a.m.

PUBLIC PROTECTION & REGULATION CABINET
Department of Financial Institutions
(As Amended at ARRS, June 9, 1998)

808 KAR 10:340. Registration exemption for certain limited offerings made exclusively to accredited investors.

RELATES TO: KRS 292.410(1)(i), 292.420(3), 17 CFR 230.501 [Chapter 292]

STATUTORY AUTHORITY: KRS 292.500(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 292.500(3) authorizes the commissioner to promulgate administrative regulations necessary to carry out the provisions of KRS Chapter 292. KRS 292.410(1)(i)5 authorizes the commissioner to deny or expand the exemption created for a limited offering made exclusively to an accredited investor. This administrative regulation establishes additional requirements for claiming the registration exemption for a limited offering made exclusively to an accredited investor. [To allow a transactional exemption from registration for sales of securities to accredited investors and to provide a definition for accredited investor:]

Section 1. An [Any] offer or sale of a security by an issuer in a transaction that meets the requirements established in KRS 292.410(1)(i) and this administrative regulation shall be exempt [of this administrative regulation is exempted] from KRS 292.340 through 292.390.

(1) To qualify for this exemption, the sale of a security shall be made exclusively to a person who:

(a) Is an accredited investor pursuant to KRS 292.410(1)(i)3b and 17 CFR 230.501(a); or

(b) Is reasonably believed by the issuer to be an accredited investor pursuant to KRS 292.410(1)(i)3b and 17 CFR 230.501(a). [Sales of securities shall be made only to persons who are or the issuer reasonable believes are accredited investors. "Accredited investor" is defined in the Rules of the United States Securities and Exchange Commission (Rule CFR 230.501(a) or the version currently in effect).]

(2) The exemption shall not be [is not] available to an issuer that has no specific business plan or purpose or has indicated that its business plan is to engage in a merger or acquisition with an unidentified company or companies, or other entity or person.

(3) The issuer shall reasonably believe that each purchaser is [reasonably believes that all purchasers are] purchasing for investment and not with a view to or for sale in connection with a distribution of the security.

(a) A [Any] resale of a security sold in reliance on this exemption within twelve (12) months of sale, except a resale to an accredited investor or pursuant to a registration statement effective under KRS 292.340 through 292.390, shall be presumed to be with a view to distribution and not for investment.

(b) If resold, a security [Securities] issued under this exemption shall [may only] be resold pursuant to registration or an exemption under **KRS Chapter 292, [the Securities Act of Kentucky.]**

(4)(a) Except as provided in paragraph (b) of this subsection, this exemption shall not be [is not] available to an issuer if:

(a) the issuer, any of the issuer's predecessors, any affiliated issuer, any of the issuer's directors, officers, general partners, beneficial owners of ten (10) percent or more of any class of its equity securities, any of the issuer's promoters, promoters presently connected with the issuer in any capacity, any underwriter of the securities to be offered, or any partner, director or officer of **the [such]** underwriter:

1. Within the last five (5) years, has filed a registration statement which is the subject of a currently effective registration stop order entered by **a [any]** state securities administrator or the United States Securities and Exchange Commission;

2. Within the last five (5) years, has been convicted of **a [any]** criminal offense in connection with the offer, purchase or sale of **a [any]** security, or involving fraud or deceit;

3. Is currently subject to **a [any]** state or federal administrative enforcement order or judgment, entered within the last five (5) years, finding fraud or deceit in connection with the purchase or sale of **a [any]** security; or

4. Is currently subject to **an [any]** order, judgment or decree of **a [any]** court of competent jurisdiction, entered within the last five years, temporarily, preliminarily or permanently restraining or enjoining **the [such]** party from engaging in or continuing to engage in **a [any]** conduct or practice involving fraud or deceit in connection with the purchase or sale of **a [any]** security.

(b) Paragraph (a) of this subsection shall not apply if:

1. The party subject to the disqualification is licensed or registered to conduct securities related business in the state in which the order, judgment or decree creating the disqualification was entered against **the [such]** party; or

2. Before the first offer under this exemption, the state securities administrator, or the court or regulatory authority that entered the order, judgment, or decree, waives the disqualification.

(5) A general announcement of the proposed offering may:

(a) Be made in a manner selected by the issuer; and

(b) State the following information unless the commissioner determines that additional information is in the public interest: [by any means and shall include only the following information, unless additional information is specifically permitted by the commissioner:]

1. **[(a)]** The name, address and telephone number of the issuer of the securities;

2. **[(b)]** The name, a brief description and price (if known) of **the [any]** security to be issued;

3. **[(c)]** A brief description of the business of the issuer in twenty-five (25) words or less;

4. **[(d)]** The type, number and aggregate amount of securities being offered;

5. **[(e)]** The name, address and telephone number of the person to contact for additional information; and

6. **[(f)]** A statement that:

a. A sale shall exclusively be made to an accredited investor.

b. Money or other consideration shall not be solicited or accepted; and

[1. Sales will only be made to accredited investors;

2. No money or other consideration is being solicited or will be accepted; and]

c. [3.] The security:

(i) Has [securities have] not been registered with or approved by **a [any]** state securities agency or the United States Securities and Exchange Commission; and

(ii) Is [are] being offered and sold pursuant to **an** exemption from registration.

(6) The issuer, in connection with an offer, may provide information in addition to the general announcement under subsection (5) of this section, if **the [such]** information:

(a) Is delivered through an electronic database that is restricted to persons who have been prequalified as accredited investors; or

(b) Is delivered after the issuer reasonably believes that the prospective purchaser is an accredited investor.

(7) A [No] telephone solicitation shall **not** be **made [permitted]** unless prior to placing the call, the issuer reasonably believes that the prospective purchaser to be solicited is an accredited investor.

(8) Dissemination of the general announcement of the proposed offering to **a person [persons]** who **is not an [are not]** accredited investor [investors] shall not disqualify the issuer from claiming the exemption under this **administrative regulation. [rule.]**

(9) Within fifteen (15) days after the first sale in this state, the issuer shall file with the commissioner:

(a) A notice transaction;

(b) A consent to service of process;

(c) A copy of the general announcement; and

(d) A fee in the amount of \$250 **as required by KRS 292.420(3) [within fifteen (15) days after the first sale in this state].**

ARTHUR FREEMAN, Commissioner

COLLEEN KEEFE, Staff Attorney

APPROVED BY AGENCY: March 12, 1998

FILED WITH LRC: March 13, 1998 at 11 a.m.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Financial Institutions
(As Amended at ARRS, June 9, 1998)

808 KAR 10:350. Internet advertising.

RELATES TO: KRS 292.320, 292.330 [Chapter 292]

STATUTORY AUTHORITY: KRS 292.500(3)

NECESSITY, FUNCTION, AND CONFORMITY: **KRS 292.500(3) authorizes the commissioner to promulgate administrative regulations necessary to carry out the provisions of KRS Chapter 292. KRS 292.330 requires a person to be registered or exempt from registration before transacting business involving a security in Kentucky. This administrative regulation establishes requirements governing the use of the Internet to distribute information on an available product or service by securities industry personnel. [To allow Internet use by securities professionals which might otherwise be deemed a violation of Kentucky law.]**

Section 1. **Securities industry personnel, including a broker-dealer, investment adviser, broker-dealer agent, or investment adviser representative, shall not be subject to the registration requirements established in KRS 292.330 for using the Internet to distribute information on an available product or service if:** [Broker-dealers, investment advisers, broker-dealer agents or investment adviser representatives (individually and collectively, "securities industry personnel") who use the Internet to distribute information on available products and services shall not be deemed to be subject to the registration provisions of KRS 292.330 provided that:]

(1) The Internet communication contains a legend clearly stating that the securities industry personnel in question may only transact business in those states where they are registered or otherwise excluded or exempted from state registration requirements;

(2) The Internet communication contains a mechanism which reasonably ensures that any subsequent interaction between prospective customers or clients residing in states where the securities industry personnel are not registered is limited so as to not trigger state registration or licensing requirements or securities registration requirements. **State registered securities industry personnel shall not be relieved** [Nothing in this paragraph shall be construed to relieve state registered securities industry personnel] from their obligation to observe applicable securities registration requirements in any state in which they transact business;

(3) The Internet communication:

(a) Does not involve the actual offering of securities trades, or the rendering of personalized investment advice for compensation over the Internet; and

(b) [-but] Is limited to the dissemination of information on **a product or service [products and services];** and

(4) In case of a broker-dealer agent or investment adviser representative:

(a) The agent's or investment adviser representative's affiliation with the broker-dealer or investment adviser is prominently disclosed within the Internet communication;

(b) The broker-dealer or investment adviser with whom the agent or investment adviser representative is associated retains responsibility for reviewing and approving the content of the agent's or investment adviser representative's Internet communication;

(c) The broker-dealer or investment adviser with whom the agent or investment adviser representative is associated authorizes the agent's or representative's Internet distribution of information on the particular product or service [products and services]; and

(d) In disseminating information on the Internet, the agents or investment adviser representatives are acting within the scope of their authority with the broker-dealer or investment adviser.

Section 2. This administrative regulation **shall**:

(1) Extend to the registration requirements established in KRS 292.330; and

(2) [extends to registration requirements only, and does] Not excuse compliance with applicable antifraud provisions of KRS 292.320.

ARTHUR FREEMAN, Commissioner

COLLEEN KEEFE, Staff Attorney

APPROVED BY AGENCY: March 12, 1998

FILED WITH LRC: March 13, 1998 at 11 a.m.

PUBLIC PROTECTION AND REGULATION CABINET

Department of Financial Institutions

(As Amended at ARRS, June 9, 1998)

808 KAR 10:360. Safe harbor for limited liability company membership interests.

RELATES TO: KRS 292.310(18) [Chapter 292]

STATUTORY AUTHORITY: KRS 292.500(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 292.500(3) authorizes the commissioner to promulgate administrative regulations necessary to carry out the provisions of KRS Chapter 292. KRS 292.330 requires registration for a nonexempt security. This administrative regulation establishes requirements for determining if a membership interest in a limited liability company is a security and whether registration is required. [To incorporate the no action position of the department that membership interests in certain limited liability companies are not securities.]

Section 1. Except as provided in Section 2 of this administrative regulation, a membership interest in a limited liability company **shall not be considered a security if** [is not a "security" when] the following requirements are met:

(1) The articles of organization of the limited liability company do not vest management of the limited liability company in one (1) or more managers; and

(2) The aggregate number of members of the limited liability company, after the membership interest is sold, does not exceed fifteen (15).

Section 2. If a membership interest in a limited liability company does not meet the requirements established [set forth] in Section 1 of this administrative regulation, **the membership interest shall**:

(1) [Such membership interest nonetheless shall] Be presumed not to be a "security" if the following requirements are met:

(a) The articles of organization of the limited liability company do not vest management of the limited liability company in, nor does the operating agreement of the limited liability company delegate the essential managerial responsibilities of the limited liability company to, one (1) or more managers who are not members; and

(b) The aggregate number of members of the limited liability company, after the membership interest is sold, does not exceed thirty-five (35); **or**

(2) [Such membership interest shall] Be presumed to be a "security" if:

(a) The articles of organization of the limited liability company vest management of the limited liability company in, or the operating agreement of the limited liability company delegates the essential managerial responsibilities of the limited liability company to, one (1) or more managers who are not members; or

(b) The aggregate number of members of the limited liability company, after the membership interest is sold, exceeds thirty-five (35).

Section 3. The presumptions established [set forth] in Section 2 of this administrative regulation **shall be** [are] rebuttable, based upon an analysis of all facts and circumstances relevant to determining whether the limited liability company membership interest constitutes an "investment contract".

ARTHUR FREEMAN, Commissioner

COLLEEN KEEFE, Staff Attorney

APPROVED BY AGENCY: March 12, 1998

FILED WITH LRC: March 13, 1998 at 11 a.m.

PUBLIC PROTECTION AND REGULATION CABINET

Department of Financial Institutions

(As Amended at ARRS, June 9, 1998)

808 KAR 10:370. Securities offered on the Internet but not sold in Kentucky.

RELATES TO: KRS 292.410(1)(q) [Chapter 292]

STATUTORY AUTHORITY: KRS 292.500(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 292.500(3) authorizes the commissioner to promulgate administrative regulations necessary to carry out the provisions of KRS Chapter 292. KRS 292.340 requires registration for a nonexempt security. KRS 292.410(1)(q) authorizes the commissioner to create exemptions from the registration requirements established in KRS 292.340. This administrative regulation establishes requirements for determining if the transmission of information via the Internet concerning a security offering requires registration pursuant to KRS 292.340. [To clarify that transmission of information via the Internet concerning securities offerings does not require registration under certain circumstances.]

Section 1. **An** [Any] attempt to offer or dispose of, or a solicitation of an offer to purchase, a security, or an interest in a security for value, made via **the Internet, including** a communication on a proprietary or "common carrier" electronic delivery system, the World Wide Web or the Internet, **shall be considered** [(to all of which the term "Internet" applies for purposes of this rule) is] an "offer" of a security under KRS Chapter 292. [this Act.]

Section 2. **Registration shall not be required for a security that will be:**

(1) Offered by an issuer on the Internet; and

(2) Not sold in Kentucky. [It is not necessary or appropriate in the public interest or for the protection of Kentucky investors to require the registration of securities which will be offered by an issuer on the Internet, but not sold in Kentucky. Furthermore, registration in Kentucky of securities which will be offered on the Internet, but not sold here, would be an undue burden on an issuer.]

Section 3. **A security** [The exemption from registration of securities] offered by an issuer on the Internet **shall be exempt from the registration requirements established in KRS 292.340 through 292.390 if:** [is conditioned on the following:]

(1) The offer indicates, directly or indirectly, that the **security shall** [securities will] not be sold to **a person** [persons] in Kentucky; **and**

(2) **The** [An] offer is not otherwise specifically directed to **a** [any] person in Kentucky by, or on behalf of, the issuer; and

(3) **A sale** [No sales] of the issuer's **security shall not be** [securities are] made in Kentucky as a result of the offer until:

(a) 1. The offering has been registered and declared effective; and
2. The final prospectus or Form U-7 has been delivered to **the investor** [investors] prior to **the** [such] sale; or

(b) The sale is [the sales are] exempt from registration.

Section 4. Reliance on the exemption from registration established under this administrative regulation shall [provided under this rule does] not preclude an issuer from relying on another [any other] exemption available under KRS Chapter 292. [the Kentucky Securities Act.]

Section 5. Incorporation by Reference. (1) Form U-7, "Small Corporate Offerings Registration", April 1989, North American Securities Administrators Association, Inc. is incorporated by reference.

(2) It may be inspected, copied, or obtained at the Department of Financial Institutions, 477 Versailles Road, Frankfort, Kentucky, 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

(3) A copy may also be obtained from the National Association of Securities Dealers (NASD), 1735 K Street, N.W., Washington, D.C., 20006, or a regional NASD office.

ARTHUR FREEMAN, Commissioner

COLLEEN KEEFE, Staff Attorney

APPROVED BY AGENCY: March 12, 1998

FILED WITH LRC: March 13, 1998 at 11 a.m.

**PUBLIC PROTECTION AND REGULATION CABINET
Department of Financial Institutions
(As Amended at ARRS, June 9, 1998)**

808 KAR 10:380. Solicitations of interest prior to the filing of a registration statement.

RELATES TO: KRS 292.330, 292.340, 292.410(1)(i), (q), 292.470 [Chapter 292]

STATUTORY AUTHORITY: KRS 292.500(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 292.500(3) authorizes the commissioner to promulgate administrative regulations necessary to carry out the provisions of KRS Chapter 292. KRS 292.330 requires registration for a nonexempt security. KRS 292.410(1)(q) authorizes the commissioner to create exemptions from the registration requirements established in KRS 292.330. This administrative regulation establishes requirements for determining if a solicitation of interest prior to the filing of a registration statement requires registration pursuant to KRS 292.330. [To allow issuers to "test the waters" for interest in a contemplated offering before incurring the expense of registration.]

Section 1. [Pursuant to KRS 292.410(1)(q), the commissioner having found that registration is not necessary or appropriate in the public interest or for the protection of investors, the transaction in subsection (1) of this section is determined to be exempt from the registration provisions of KRS 292.340 through 292.390.] **(1) Pursuant to KRS 292.410(1)(q), a [Any] written document, oral communication, Internet communication, or the dissemination of a [any] scripted radio or television broadcast, made by or on behalf of an issuer for the sole purpose of soliciting an indication of interest in receiving an offering circular (or its equivalent) for an offering of a security [securities] in this state shall be exempt from the requirements established in KRS 292.330 to 292.390 if: [if all of the following conditions are satisfied:]**

(a) The issuer;

1. Is or will be a business entity organized under the laws of one (1) of the states or possessions of the United States or one (1) of the provinces or territories of Canada;

2. Is engaged in or proposes to engage in a business other than petroleum or natural gas exploration or production or mining or other extractive industries; and

3. Is not a development stage company that either has:

a. No specific business plan or purpose; or

b. [has] Indicated that its business plan is to merge with an unidentified company or companies;

(b) The solicitation of interest is not for a blind pool offering or other offering for which the specific business in which to be engaged or property to be acquired cannot be described at the time of the solicitation;

(c) The issuer intends to register the securities in this state and conduct its offering pursuant to 15 USC 77c(a)(11), 17 CFR 230.147, 230.251, or 230.504; [Section 3(a)(11) of the Securities Act of 1933, as amended, or Rule 147, Regulation A or Rule 504 of Regulation D, as promulgated by the Securities and Exchange Commission.]

(d) The written document, Internet communication, or script of the broadcast:

1. States that the solicitation is not an offering of a security [securities] for sale, and that a [any] public offering to be made shall [will] be made by means of an offering circular that;

a. May be obtained from the issuer; and

b. [that] Will contain detailed information about the company and management, as well as financial statements;

2. States that no money or other consideration is being solicited, and if sent in response, shall [will] not be accepted;

3. States that a [no] sale of a security shall not [the securities will] be made or a commitment to purchase shall not be accepted until;

a. A registration statement is filed with the commissioner and becomes effective; or

b. An appropriate exemption from registration is available and utilized;

4. States that an indication of interest made by a prospective investor shall not involve an [involves no] obligation or commitment; and [of any kind.]

5. Identifies the chief executive officer of the issuer and briefly and in general describes its business and products;

(e) Five (5) business days prior to the initial solicitation of interest under this administrative regulation [rule], the issuer submits a copy of a [any] written document, a written transcript of the Internet communication, or the script of a [any] broadcast to be used in reliance upon this section to the commissioner. The document, transcript, or broadcast script shall [either] contain or be accompanied by the name and telephone number of a person able to answer questions about the document or the broadcast. The issuer shall also submit [Note: Only] solicitation of interest material that contains substantive changes from or additions to previously submitted material; [need be submitted.]

(f) An oral communication with a prospective investor or other broadcast shall not be [Oral communications with prospective investors and other broadcasts are not] made until after submission of the written document or script of the broadcast to the commissioner as required by [provided in] paragraph (e) of this subsection;

(g) A [No] written document, script, advertisement or other material which the issuer has been notified by the commissioner not to distribute shall not be [is] used to solicit an indication [indications] of interest;

(h) Except for a scripted broadcast [broadcasts] and except to the extent necessary to obtain information needed to provide a solicitation of interest document, the issuer shall [does] not communicate with a prospective investor about the contemplated offering unless the prospective investor is provided with a written document containing the disclosures required by [set forth in] paragraph (d) of this subsection at or before the time of the communication or within five (5) calendar days after the communication;

(i) During the solicitation of interest period, the issuer shall [does] not solicit or accept money or other consideration, or a [any] commitment, binding or otherwise, to purchase a security from a [securities from any] prospective investor in reliance upon this section;

(j) A sale shall not be [No sale is] made until a registration statement is effective pursuant to KRS Chapter 292 with respect to the offering, or an appropriate exemption from registration is available and utilized; and

(k) 1. Except as provided in subparagraph 2 of this paragraph, the issuer does not know, and in the exercise of reasonable care could not know, that the issuer, any of the issuer's officers, directors, general partners or beneficial owners of ten (10) percent or more of any class of its equity securities, any promoter presently connected with the issuer in any capacity, or any person paid or given, directly or indi-

rectly, a commission, fee or other remuneration for soliciting an [any] indication of interest pursuant to this administrative regulation [rule]:

a. [1:] Has filed a registration statement which is the subject of a currently effective registration stop order entered pursuant to a [any] federal or state securities law within five (5) years prior to the submission of the written document or broadcast script to the commissioner as required by [provided-in] paragraph (e) of this subsection;

b. [2:] Has been convicted within five (5) years prior to the submission of the written document or broadcast script to the commissioner as required by [provided-in] paragraph (e) of this subsection of a [any] felony or misdemeanor in connection with the offer, purchase or sale of a [any] security or a [any] felony involving fraud or deceit, including[, but not limited to,] forgery, embezzlement, obtaining money under false pretense, larceny or conspiracy to defraud;

c. [3:] Is currently subject to a [any] federal or state administrative enforcement order or judgment entered by a [any] state securities administrator or the Securities and Exchange Commission within five (5) years prior to the submission of the written document or broadcast script to the commissioner as required by [provided-in] paragraph (e) of this subsection, or is subject to a [any] federal or state administrative enforcement order or judgment entered within five (5) years prior to the submission of the written document or broadcast script to the commissioner as required by [provided-in] paragraph (e) of this subsection, in which fraud or deceit, including[, but not limited to,] making an untrue statement of material fact [untrue statements of material facts] or omitting to state a material fact [material facts], was found;

d. [4:] Is subject to a [any] federal or state administrative enforcement order or judgment which prohibits, denies or revokes the use of an [any] exemption from registration in connection with the offer, purchase or sale of a security; or [securities];

e. [5:] Is currently subject to an [any] order, judgment or decree of a [any] court of competent jurisdiction temporarily or preliminarily restraining or enjoining, or is subject to an [any] order, judgment or decree of a [any] court of competent jurisdiction permanently restraining or enjoining, the [such] party from engaging in or continuing a [any] conduct or practice in connection with the purchase or sale of a [any] security or involving the making of a [any] false filing with the state entered within five (5) years prior to the submission of the written document or broadcast script to the commissioner as required by [provided-in] paragraph (e) of this subsection.

2. The prohibitions established in subparagraph 1 of this paragraph shall not apply if:

a. The person subject to the disqualification is duly licensed or registered to conduct securities related business in the state in which the administrative order or judgment was entered against the person;

b. The broker-dealer employing the party is licensed or registered in Kentucky and the Form BD filed with Kentucky discloses the order, conviction, judgment or decree relating to the person.

3. A person disqualified under subparagraph 1 of this paragraph shall not act in a capacity other than that for which the person is licensed or registered.

4. A disqualification pursuant to subparagraph 1 of this paragraph shall be automatically waived if the agency which created the basis for disqualification determines upon a showing of good cause that it is not necessary under the circumstances that the exemption be denied.

5. It shall be a defense to a violation of subparagraph 1 of this paragraph if the issuer sustains the burden of proof that it did not know, and in the exercise of reasonable care could not have known, that a disqualification under subparagraph 1 of this paragraph existed.

[The prohibitions listed in subparagraphs 1 through 5 of this paragraph shall not apply if the person subject to the disqualification is duly licensed or registered to conduct securities related business in the state in which the administrative order or judgment was entered against such person or if the broker-dealer employing such party is licensed or registered in this state and the Form BD filed with this state discloses the order, conviction, judgment or decree relating to such person. No person disqualified under this paragraph may act in a capacity other than that for which the person is licensed or registered. Any disqualification caused by this paragraph shall be automatically

~~waived if the agency which created the basis for disqualification determines upon a showing of good cause that it is not necessary under the circumstances that the exemption be denied. It is a defense to a violation of this paragraph if the issuer sustains the burden of proof that it did not know, and in the exercise of reasonable care could not have known, that a disqualification under this paragraph existed.]~~

(2)(a) A communication with a prospective investor shall not be made in reliance on this administrative regulation [No communications with prospective investors are made in reliance on this rule] after a registration statement is filed in this state,

(b) A sale shall not [and no sale may] be made pursuant to an effective registration statement until at least twenty (20) calendar days after the last communication made in reliance on this administrative regulation [rule].

(3)(a) Except as provided in paragraph (b) of this subsection, a failure to comply with a condition established in subsection (1) of this section shall [any condition of this section will] not result in the loss of the exemption from the requirements of KRS 292.340 through 292.390 for an [any] offer to a particular individual or entity if the issuer shows:

1. [(a)] The failure to comply did not pertain to a condition directly intended to protect that particular individual or entity;

2. [(b)] The failure to comply was insignificant with respect to the offering as a whole; and

3. [(c)] A good faith and reasonable attempt was made to comply with all applicable conditions of subsection (1) of this section.

(b) If [Where] an exemption is established only through reliance upon the provisions of paragraph (a) of this subsection, the failure to comply shall:

1. [nonetheless] Be actionable as a violation of KRS Chapter 292 [violations of this chapter] by the commissioner under KRS 292.470; and

2. Constitute grounds for denying or revoking the exemption as to a specific security or transaction.

(4) A written document or Internet communication used in reliance upon this administrative regulation may include a coupon returnable to the issuer or an Internet email link to the issuer, which shall:

(a) Indicate interest in a potential offering;

(b) Reveal the name, address and telephone number of the prospective investor;

(c) State clearly and separately that:

1. The indication of interest shall not be binding; and

2. Money shall not be sent; and

(d) Not request information about the financial profile of the investor, including income, assets or investment history.

(5)(a) The commissioner shall waive a condition of this exemption in writing, upon application by the issuer if the issuer shows good cause for the exemption.

(b) The compliance or attempted compliance with the requirements of this administrative regulation, or the absence of an objection or order by the commissioner with respect to an offer of a security undertaken pursuant to this administrative regulation, shall not be deemed to be a:

1. Waiver of a condition of this administrative regulation; or

2. Confirmation by the commissioner of the availability of the exemption authorized by this administrative regulation. [Any written document or Internet communication used in reliance upon this administrative regulation may include a coupon returnable to the issuer or Internet e-mail link to the issuer, indicating interest in a potential offering, revealing the name, address and telephone number of the prospective investor, and stating clearly and separately that the indication of interest is not binding and that no money should be sent. Such coupon or Internet link may not request information about the financial profile of the investor, such as income, assets or investment history.]

(5) The commissioner may waive any condition of this exemption in writing, upon application by the issuer and good cause having been shown. Neither compliance nor attempted compliance with this administrative regulation, nor the absence of any objection or order by the commissioner with respect to any offer of securities undertaken pursuant to this administrative regulation, shall be deemed to be a

waiver of any condition of the rule or deemed to be a confirmation by the commissioner of the availability of this administrative regulation.]

(6) **An offer** [Offers] made in reliance on this administrative regulation **shall** [will] not result in a violation of KRS 292.340 by virtue of being integrated with a subsequent **offer or sale of a security unless the subsequent offer or sale** [offers or sales of securities unless such subsequent offers and sales] would be integrated under **an applicable federal security law**. [federal securities laws.]

(7) **If** [Where] an issuer has a bona fide change of intention and decides to pursue an exempt offering pursuant to KRS 292.410(1)(i) or 808 KAR 10:210 after following the process **established** [permitted] by this administrative regulation without having filed a registration statement, the issuer may proceed with **the** [such] exempt offering if:

(a) At least thirty (30) calendar days have elapsed between the last solicitation of interest pursuant to this administrative regulation and the first sale of a security pursuant to the exempt offering; and

(b) The issuer has complied with all of the conditions of the applicable exemption, including [but not limited to] the provision of all solicitation of interest documents submitted to the commissioner.

(8) **A communication** [All communications] made in reliance on this administrative regulation **shall be** [are] subject to the antifraud provisions of **KRS Chapter 292**. [this chapter.]

(9) **A** [No] commission, fee or other remuneration **shall not** [may] be paid or given, directly or indirectly, to **a** [any] person for soliciting **a** [any] prospective investor in this state unless **the** [such] person is:

(a) Appropriately registered in this state pursuant to KRS 292.330; **or**

(b) **Exempt from registration.**

Section 2. **If an indication** [Where indications] of interest **is** [are] solicited in reliance upon this administrative regulation by **an agent** [agents] of the issuer, **the person** [these persons] shall be exempt from the agent registration requirements of KRS 292.330 if all of the conditions **established in Section 1(1) of this administrative regulation** [set forth in this section] are satisfied.

Section 3. Incorporation by Reference. (1) Form B-D, "Application for Registration as Broker-Dealer", July 1988 edition, is incorporated by reference.

(2) It may be inspected, copied, or obtained at the Department of Financial Institutions, 477 Versailles Road, Frankfort, Kentucky, 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

(3) A copy may also be obtained from the National Association of Securities Dealers (NASD), 1735 K Street, N.W., Washington, D.C., 20006, or a regional NASD office.

ARTHUR FREEMAN, Commissioner

COLLEEN KEEFE, Staff Attorney

APPROVED BY AGENCY: March 12, 1998

FILED WITH LRC: March 13, 1998 at 11 a.m.

PUBLIC PROTECTION AND REGULATION CABINET

Department of Financial Institutions

(As Amended at ARRS, June 9, 1998)

808 KAR 10:390. Confidentially disclosed documents.

RELATES TO: KRS 292.500(17) [Chapter 292]

STATUTORY AUTHORITY: KRS 292.500(3)

NECESSITY, FUNCTION, AND CONFORMITY: **KRS 292.500(3) authorizes the commissioner to promulgate administrative regulations necessary to carry out the provisions of KRS Chapter 292. KRS 292.500(17) authorizes the commissioner to share information gained pursuant to an examination, investigation, filing, or other source, with a governmental agency, jurisdiction, or governmental or self-regulating organization or entity to the extent the commissioner determines that the sharing of information is or will be reasonable necessary of useful to the department or agency in carrying out its regulatory responsibilities. This administrative regulation establishes the requirements for release of confidential information pursuant to KRS 292.500(17).** [To elaborate on the circumstances when the depart-

ment may disclose confidential documents in the performance of its official function.]

Section 1. **Pursuant to KRS 292.500(17), the commissioner may disclose confidential information if the requirements established in this section are met.** [Notwithstanding the provisions of KRS 292.500(18), the commissioner may disclose documentation otherwise deemed to be confidential at the time of such disclosure as follows:]

(1) The commissioner may [in his discretion] disclose the content of **an** [any] investigation, examination report, preliminary examination report or results, or [any] other matter relating to [any of] the preceding, to another governmental or regulatory authority, including [but not limited to] the U.S. Securities and Exchange Commission, the NASD, **a** [any] state securities regulator, **a** [any] state or federal criminal agency, **or a** [and any] criminal prosecutorial body, if:

(a) The agency receiving **the** [such] information agrees in writing to hold it confidential; or

(b) The commissioner reasonably believes a legitimate governmental purpose is served by **the** [such] disclosure regardless of the ability of **the** [such] other agency to ensure the confidentiality of the disclosed material.

(2) **The** [Such] materials, documentation or other information referred to in subsection (1) of this section **shall** lose their confidential status upon the termination of **an** [any] investigation [and/] or enforcement action where **the** [such] information has been utilized by this or **another** [any other] regulatory body against or with respect to the entity [and/] or person that initially provided **the** [such] materials to the department.

(3) [Notwithstanding subsections (1) and (2) of this section,] Except as necessary for the department to enforce the provisions of **KRS Chapter 292** [this chapter], a consumer complaint or other information relative to an investigation or examination shall remain confidential pursuant to the provisions of KRS 292.500(18) and exempt from public disclosure after **the** [such] documents would otherwise lose their confidential status pursuant to the provisions of subsection (1) or (2) of this section, if **the** [such] public disclosure would:

(a) Jeopardize the integrity of another active investigation, examination or proceeding;

(b) Reveal the name, address, telephone number, Social Security number, or [any] other identifying number or information of **a** [any] complainant, customer, or account holder;

(c) Disclose the identity of a confidential source;

(d) Disclose investigative techniques or procedures; or

(e) Reveal a trade secret.

(4) After five (5) years the commissioner may destroy discarded or obsolete materials, documentation or other information.

ARTHUR FREEMAN, Commissioner

COLLEEN KEEFE, Staff Attorney

APPROVED BY AGENCY: March 12, 1998

FILED WITH LRC: March 13, 1998 at 11 a.m.

CABINET FOR FAMILIES AND CHILDREN

Department for Social Insurance

Division of Management and Development

(As Amended at ARRS, June 9, 1998)

904 KAR 2:015. Supplemental programs for persons who are aged, blind, or have a disability.

RELATES TO: KRS 205.245, 20 CFR 416.2095, 416.2096, 8 USC 1621, 1641

STATUTORY AUTHORITY: KRS 194.050, 205.245, 42 USC 1382e-g, **HB 321 (1998)** [EO 96-862]

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Families and Children is authorized to administer a state funded program of supplementation to all December, 1973, former recipients of aid to the aged, blind and disabled, disadvantaged by the implementation of the Supplemental Security Income Program. KRS 205.245 provides for the mandatory supplementation program and also for supplementation to other needy persons who are aged, blind, or have

VOLUME 25, NUMBER 1 – JULY 1, 1998

a disability. The cabinet shall operate a supplement program for certified personal care homes which accept state supplementation recipients and have a thirty-five (35) percent of the residents in the personal care home's occupied licensed personal care beds who have a diagnosis of mental illness or mental retardation. This administrative regulation sets forth the provisions of the supplementation program.

Section 1. Definitions. (1) "Aid to the Aged, Blind and Disabled Program" means the former state funded program for individuals who were aged, blind or had a disability.

(2) "Qualified alien" means an alien who, at the time the person applies for, receives, or attempts to receive state supplementation, is an alien as defined in Section 1(10) of 904 KAR 2:006.

(3) "Specialized personal care home" means a licensed personal care home which receives funding from the Department for Mental Health and Mental Retardation Services to employ mental health professionals who have specialized training in the care of residents with mental illness or mental retardation.

Section 2. Mandatory State Supplementation. (1) Mandatory state supplementation payments shall be equal to the difference between:

(a) The Aid to the Aged, Blind and Disabled Program payment for the month of December, 1973, plus any other income available to the recipient as of that month; and

(b) The total of the Supplemental Security Income Program payment and other income for the current month.

(2) Recipients include former Aid to the Aged, Blind and Disabled Program recipients who became ineligible for the Supplemental Security Income Program due to income but whose special needs entitled them to an Aid to the Aged, Blind and Disabled Program payment as of December, 1973.

(3) Mandatory payments shall continue until:

(a) The needs of the recipient as recognized in December, 1973, have decreased; or

(b) Income has increased to the December, 1973 level.

(4) The mandatory payment shall not be increased unless:

(a) Income as recognized in December, 1973, decreases;

(b) The Supplemental Security Income Program payment is reduced but the recipient's circumstances are unchanged; or

(c) The standard of need utilized by the department in determining optional supplementation payments for a class of recipients is increased.

(5) In cases of a husband and wife living together, income changes after September, 1974, shall not result in an increased mandatory payment unless total income of the couple is less than December, 1973, total income.

Section 3. Optional State Supplementation. (1) Optional state supplementation shall be [is] available to a person who:

(a) Except as specified in Sections 5, 6, and 7 of this administrative regulation, meets technical requirements and resource limitations of the medically needy program for persons who are aged, blind, or have a disability as contained in 907 KAR 1:011, 907 KAR 1:640, 907 KAR 1:645, 907 KAR 1:650, and 907 KAR 1:660 [1:004]; and

(b) Requires special living arrangements; and

(c) Has insufficient income to meet their need for care.

(2) Special living arrangements shall include:

(a) Residence in a personal care home which:

1. Meets the requirements and provides services as specified in 902 KAR 20:036; and

2. Is licensed under KRS 216B.010 to 216B.131; or

(b) Residence in a family care home which:

1. Meets the requirements and provides services as specified in 902 KAR 20:041; and

2. Is licensed under KRS 216B.010 to 216B.131; or

(c) A situation [Situations] in which a caretaker must be hired to provide care other than room and board.

(3) Each person applying for or receiving state supplementation shall be required to:

(a) Furnish a Social Security number; or

(b) If a Social Security number has not been issued, apply for a Social Security number.

(4) If potential eligibility exists for Supplemental Security Income Program, application for Supplemental Security Income Program shall be mandatory.

Section 4. Eligibility for Caretaker Services. (1) Services by a caretaker shall be made to enable the individual with an illness or infirmity to:

(a) Remain safely and adequately:

1. At home;

2. In another family setting; or

3. In a room and board situation; and

(b) Prevent institutionalization.

(2) Services by a caretaker shall be made at regular intervals by:

(a) A live-in attendant; or

(b) One (1) or more persons hired to come to the home.

(3) A supplemental payment shall not be made to or on behalf of an otherwise eligible individual if:

(a) The client is taken daily or periodically to the home of the caretaker; or

(b) The caretaker service is provided by the following persons living with the applicant:

1. The spouse;

2. Parent of an adult child who has a disability or a minor child; or

3. Adult child of a parent who is aged, blind or has a disability.

(4) Eligibility for caretaker supplementation shall be verified by agency contact with the caretaker to establish:

(a) How often the service is provided;

(b) The service prevents institutionalization; and

(c) Payment is made for the service.

Section 5. Resource Consideration. (1) Except as stated in subsection (2) of this section, countable resources shall be determined according to policies for the medically needy as contained in 907 KAR 1:640, 907 KAR 1:645, 907 KAR 1:650, and 907 KAR 1:660. [907 KAR 1:004;]

(2) The individual or couple shall not be eligible if countable resources exceed the limit of:

(a) \$2000 for individual; or

(b) \$3000 for couple.

Section 6. Income Considerations. (1) Except as noted in subsections (2) through (9) of this section, income and earned income deductions shall be considered according to policies for the medically needy in 907 KAR 1:640, 907 KAR 1:645, 907 KAR 1:650, and 907 KAR 1:660. [907 KAR 1:004;]

(2) The optional supplementation payment shall be determined by adding:

(a) Total net income of the applicant or recipient, or applicant or recipient and spouse; and

(b) Except for payments for medical insurance or medical care and services, payments made to a third party in behalf of an applicant or recipient; and

(c) Subtracting the total of paragraphs (a) and (b) of this subsection from the standard of need in Section 7 of this administrative regulation.

(3) Income of the ineligible spouse shall be:

(a) Adjusted by deducting sixty-five (65) dollars and one-half (1/2) of the remainder from the monthly earnings; and

(b) Conserved in the amount of one-half (1/2) of the Supplemental Security Income Program standard for an individual for:

1. Himself; and

2. Each minor dependent child.

(4) Income of the eligible individual shall not be conserved for the needs of the ineligible spouse or minor dependent children.

(5) Income of the child shall be considered when conserving for the needs of the minor dependent child so the amount conserved does not exceed the allowable amount.

(6) The earnings of the eligible individual and spouse shall be combined prior to the application of the earnings disregard of sixty-five (65) dollars and one-half (1/2) of the remainder.

(7) If one (1) member of a couple is institutionalized and the spouse maintains a home, income in the amount of the Supplemental Security Income Program standard for one (1) shall be conserved for

VOLUME 25, NUMBER 1 – JULY 1, 1998

the spouse, if this spouse is a recipient of the Supplemental Security Income Program.

(8) A husband and wife residing in the same personal care or family care home may be considered to be living with each other if treating the husband and wife as living apart would prevent either of them from receiving state supplementation.

(9) The Supplemental Security Income Program twenty (20) dollars general exclusion shall not be an allowable deduction from income.

Section 7. Standard of Need. (1) The standard shall be based on living arrangement as follows:

(a) ~~1. For an eligibility determination for a resident of a personal care home made on or after January 1, 1998, \$828.~~

2. For an eligibility determination for a resident of a personal care home made between May 1, 1998, and June 30, 1999, \$888.

3.a. After June 30, 1999, if funds remain available, the standard shall remain at \$888.

b. After June 30, 1999, if funds are not available, the standard shall be \$828, plus an applicable cost of living adjustment. [Upon adoption of this administrative regulation the standard shall be \$888 until June 30, 1999:

1. If funds remain available after June 30, 1999, the standard shall remain at \$888; or

2. If funds are not available, the standard shall revert to \$828, plus any applicable cost of living adjustment, after June 30, 1999.] [1997, \$818;]

(b) For an eligibility determination for a resident of a family care home made on or after January 1, 1998, \$633; [1997, \$623;]

(c) Caretaker.

1. For an eligibility determination for a single individual, or an eligible individual with an ineligible spouse who is not aged, blind, or has a disability made on or after January 1, 1998, \$527; [1997, \$517;]

2. For an eligibility determination for an eligible couple, both aged, blind, or have a disability and one (1) requiring care made on or after January 1, 1998, \$769; [1997, \$754;]

3. For an eligibility determination for an eligible couple, both aged, blind or have a disability and both requiring care made on or after January 1, 1998, \$813. [1997, \$798;]

(2) In couple cases, if both are eligible, the couple's income is combined prior to comparison with the standard of need. One-half (1/2) of the deficit is payable to each.

(3) The personal care or family care home shall accept as full payment for cost of care the amount of the standard, based on the living arrangement, minus a forty (40) dollars personal needs allowance which shall be retained by the client.

Section 8. Temporary Stay in a Medical Institution. (1) A recipient of optional or mandatory state supplementation shall have continuation of state supplementation benefits without interruption for any of the first three (3) full months of medical confinement if:

(a) Admitted to:

1. A hospital;

2. A psychiatric hospital; or

3. A nursing facility; [and]

(b) The recipient's physician shall certify that he expects the recipient to be medically confined for ninety (90) full consecutive days or less; and

(c) The state supplementation recipient receives benefits from the Supplemental Security Income Program.

(2) If discharged in the month following the last month of continued benefits, the temporary absence shall continue through the date of discharge.

Section 9. Citizenship requirements. An applicant or recipient shall be:

(1) A citizen of the United States; or

(2) A qualified alien pursuant to Section 1(2) of this administrative regulation.

Section 10. Residence Requirements. (1) The applicant or recipient shall be a resident of Kentucky.

(2) Supplemental payments may be made to Kentucky residents residing outside the state if:

(a) The individual has been placed in the other state by this state.

(b) Except with regard to the requirement shown in Section 8 of this administrative regulation, the other requirements for eligibility contained in this administrative regulation shall be applicable.

(c) For out-of-state placements, the licensure shall be in accordance with a similar licensure act of the other state.

(d) If there is no similar licensure act in the other state, the payment shall not be made unless this state determines that, except for being in another state, the facility meets standards for licensure under the provisions of KRS 216B.010 to 216B.131.

(e) To be eligible for a supplemental payment while placed out-of-state:

1. The individual shall require the level of care provided in the out-of-state placement;

2. There shall **not be a** [be no] suitable placement available in Kentucky; and

3. The placement shall be preauthorized by staff of the Department for Social Insurance.

(3) Except as specified in subsection (9) of this section, an applicant placed in Kentucky by another state shall not be considered a resident of Kentucky.

(4) The state of residence shall be Kentucky for an applicant or recipient of state supplementation if the individual:

(a) Is age twenty-one (21) and over;

(b) Is residing in the state; and

1. Intends to remain permanently or for an indefinite period; or
2. Entered the state with a job commitment or to seek employment.

(5) The applicant or recipient residing in a personal care home shall be considered incapable of indicating intent to become a Kentucky resident if the individual:

(a) Has an I.Q. of forty-nine (49) or less or has a mental age of seven (7) or less, based on the following tests:

1. Bayley Scales of Infant Development;

2. McCarthy Scales of Children's Abilities;

3. Stanford-Binet;

4. Wechsler Adult Intelligence Scale - Revised (WAIS-R);

5. Wechsler Intelligence Scale for Children-III (WISC-III);

6. Wechsler Intelligence Scale for Children - Revised (WISC-R); or

7. Wechsler Preschool and Primary Scale of Intelligence (WPPSI);

or

(b) Is judged legally incompetent; or

(c) Is found incapable of indicating intent based on medical or other documentation acceptable to the state.

(6) For an applicant or recipient residing in a family care home or requiring caretaker services, the state of residence shall be Kentucky if the individual is:

(a) Under age twenty-one (21);

(b) Eligible for a supplemental payment based on blindness or disability; and

(c) Residing in the state; or

(d) An individual age twenty-one (21) or over and incapable of indicating intent, is simply residing in the state.

(7) For an applicant or recipient residing in a personal care home who is under age twenty-one (21) or who is age twenty-one (21) or older and became incapable of indicating intent before age twenty-one (21), the state of residence shall be Kentucky if Kentucky is the state of residence of the individual's:

(a) Parents; or

(b) If one has been appointed, his legal guardian; or

(c) Parent applying for the supplemental payment on behalf of the individual if:

1. The other parent lives in another state; and

2. There is no appointed legal guardian.

(8) For an applicant or recipient residing in a personal care home who became incapable of indicating intent at or after age twenty-one (21), the state of residence shall be Kentucky if:

(a) He was living in Kentucky when he became incapable of indicating intent; or

(b) If this cannot be determined, the state of residence shall be Kentucky unless he was living in another state when he was first determined to be incapable of indicating intent.

(9) For an individual subject to a determination of residency according to subsections (7) and (8) of this section, the state of residence shall be Kentucky if Kentucky and the state that would otherwise be the individual's state of residence have entered into an interstate residency agreement providing for reciprocal residency status.

(10) An individual receiving a mandatory state supplemental payment from Kentucky shall be considered a resident of Kentucky if he continues to reside in Kentucky.

(11) An individual receiving a mandatory or optional supplemental payment from another state shall not be considered a resident of Kentucky.

(12) A former Kentucky resident who becomes incapable of indicating intent while residing out of this state, may reestablish Kentucky residency if:

- (a) He returns to Kentucky; and
- (b) He has a guardian, parent or spouse residing in Kentucky.

Section 11. Persons with Mental Illness or Mental Retardation Supplement. A certified personal care home may qualify for quarterly supplement payments of fifty (50) cents per diem for each state supplementation recipient in their care as of the first calendar day of each qualifying month. The personal care home shall meet the following criteria to qualify for a supplementation payment:

(1) The personal care home shall be licensed in accordance with KRS 216B.010 to 216B.131; and

(2) The personal care home shall care for residents who have:

(a) A primary or secondary diagnosis of mental retardation including mild or moderate, or other ranges of retardation whose needs can be met in a personal care home; or

(b) A primary or secondary diagnosis of mental illness excluding organic brain syndrome, senility, chronic brain syndrome, Alzheimer's, and similar diagnoses [~~such diagnoses as organic brain syndrome, senility, chronic brain syndrome, Alzheimer's~~]; or

(c) A medical history that includes a previous hospitalization in a psychiatric facility, regardless of present diagnosis.

(3) The personal care home shall care for a thirty-five (35) percent mental illness or mental retardation population in all of its occupied licensed personal care home beds.

(4) The personal care home shall not be eligible for payments during the time it has a conditional rating by the Office of Inspector General. Rating requirements are specified in KRS 216.550 and 900 KAR 2:030.

(5) The personal care home shall have a licensed nurse or an individual who has received and successfully completed certified medication technician training on duty for at least four (4) hours during the first or second shift each day. The personal care home **shall** [may] not decrease staffing hours of the licensed nurse or individual who has successfully completed certified medication technician training in effect prior to July 1990, as a result of this minimum requirement.

(6) The personal care home shall file an application with the Department for Social Insurance by the tenth working day of the first month of the calendar quarter to be eligible for payment in that quarter.

(a) Quarters shall begin in January, April, July and October.

(b) Once certified, unless eligibility is discontinued, a new application shall not be required.

(c) The personal care home shall provide the Department for Social Insurance with its tax identification number and address as part of the application process.

(7) The personal care home shall provide the Department for Social Insurance with a monthly report.

(a) The report shall list:

1. All residents of the personal care home who were residents on the first day of the month; and

2. The residents' Social Security numbers.

(b) In order to maintain confidentiality, the personal care home shall annotate the monthly report as follows:

1. A star shall indicate a resident has a mental illness or mental retardation diagnosis.

2. A check mark shall indicate a resident receives state supplementation.

3. A star and a check mark shall indicate the resident has a mental illness or mental retardation diagnosis and is a recipient of state supplementation.

(c) The monthly report shall be used for:

1. Certification;
2. Payment; and
3. Audit purposes.

(d) The monthly report shall be postmarked to the Department for Social Insurance by the fifth working day of the month.

(8) The personal care home shall notify the Department for Social Insurance if its mental illness or mental retardation percentage goes below thirty-five (35) percent for all personal care residents. Facilities may be randomly audited to verify percentages and payment accuracy.

Section 12. Training. (1) The personal care home licensed nurse or individual who has successfully completed certified medication technician training shall attend the mental illness or mental retardation basic training workshop provided through the Department for Mental Health and Mental Retardation Services. Other staff may attend the basic training workshop in order to assure the facility always has at least one (1) certified staff employed for certification purposes.

(2) The mental illness or mental retardation basic training shall be provided through a one (1) day workshop. The following topics shall be covered:

(a) Importance of proper medication administration.

(b) Side affects and adverse medication reactions with special attention to psychotropics.

(c) Signs and symptoms of an acute onset of a psychiatric episode.

(d) Characteristics of each major diagnosis, for example, paranoia, schizophrenia, bi-polar disorder, or mental retardation.

(e) Guidance in the area of supervision versus patient rights for the population with a diagnosis of mental illness or mental retardation.

(f) Instruction in providing necessary activities to meet the needs of residents who have a diagnosis of mental illness or mental retardation.

(3) Initial basic training shall include the licensed nurse or the individual who has successfully completed certified medication technician training and may include the owner or operator. These individuals shall be trained in the quarter during which the application is filed.

(4) To assure that a staff member who has received basic training is always employed at the facility, a maximum of five (5) may be trained during a year.

(a) If staff turnover results in the loss of the licensed nurse or individual who has successfully completed certified medication technician training and five (5) staff have been trained, the personal care home shall request in writing to the Department for Social Insurance an exemption of the five (5) staff rule.

(b) The personal care home shall have on staff a licensed nurse or individual who has successfully completed certified medication technician training who:

1. Has received the mental illness or mental retardation basic training; or

2. Is enrolled in the next scheduled mental illness or mental retardation basic training workshop at the closest location.

(5) The Department for Mental Health and Mental Retardation Services may provide advanced level training for personal care homes.

(a) Advanced level training shall be provided through one (1) day workshops.

(b) Each advanced level workshop shall consist of two (2) three (3) hour sessions per day.

(c) Each three (3) hour session shall cover a topic appropriate for staff who work with residents who have a diagnosis of mental illness or mental retardation.

(d) Attendance of advanced level training workshops shall be optional for Persons with Mental Illness or Mental Retardation Supplement Program participants.

(6) The Department for Mental Health and Mental Retardation Services shall provide within five (5) working days:

(a) A certificate to direct care staff who complete the workshop; and

(b) A listing to the Department for Social Insurance of staff who completed the training workshop.

(7) The Department for Social Insurance shall pay twenty-five (25) dollars for each staff member receiving basic or advanced level training up to the maximum of five (5) staff per year to a personal care home who has applied for the Persons with Mental Illness or Mental Retardation Supplement Program.

(8) Attendance of the basic training workshop shall be optional for a specialized personal care home.

Section 13. Persons with Mental Illness or Mental Retardation Supplement Program Certification. (1) The Office of the Inspector General, Division of Licensing and Regulation, shall visit the personal care home to certify eligibility to participate in the Persons with Mental Illness or Mental Retardation Supplement Program:

(a) The personal care home's initial Persons with Mental Illness or Mental Retardation Supplement Program certification may be separate from the annual survey;

(b) The initial Mental Illness or Mental Retardation Supplement Program certification shall be in effect until the next licensure survey that may be greater than or less than twelve (12) months;

(c) A personal care home's annual Persons with Mental Illness or Mental Retardation Supplement Program recertification may be completed during the annual licensure survey;

(d) The Department for Social Insurance shall notify the Division of Licensing and Regulation that the facility is ready to be certified.

(2) The Division of Licensing and Regulation shall review records, observe and interview residents and staff during the certification process. The Division of Licensing and Regulation shall review records to assure the following criteria is met:

(a) Certification is on file at the personal care home to verify staff attended basic training provided by the Department for Mental Health and Mental Retardation Services. This provision shall be waived for a specialized personal care home.

(b) The personal care home's certified staff have trained all other direct care staff through in-service training or orientation regarding the information obtained at the mental illness or mental retardation basic training workshop. The personal care home shall maintain documentation of attendance at the in-service training for all direct care staff.

(c) Activities are being regularly provided and meet the needs of the residents. When residents do not attend group activities, activities shall also be designed to meet the needs of individual residents, for example, reading or other activity that may be provided on an individual basis. Individualized care plans are not required to meet this criteria.

(d) Medication administration meets licensure requirements and licensed nurse or individual who has successfully completed certified medication technician training demonstrates a knowledge of psychotropic drug side affects.

(3) The Division of Licensing and Regulation shall review the personal care home copy of the training certification prior to performing their record review during the Persons with Mental Illness or Mental Retardation Supplement Program certification process.

(4) If thirty-five (35) percent mental illness or mental retardation population is met on the day of the visit, the personal care home shall be deemed to have an ongoing qualifying percentage effective with month of request for certification. The personal care home shall be responsible for notifying the Department for Social Insurance, within ten (10) working days, if the mental illness or mental retardation population goes below thirty-five (35) percent of all occupied personal care beds in the facility.

(5) The Office of the Inspector General, Division of Licensing and Regulation, shall provide a monthly statement to the Department for Social Insurance identifying certified personal care homes eligible for the Persons with Mental Illness or Mental Retardation Supplement Program. This information shall be provided by the fifth working day of each month for the prior month.

(6) The Office of Inspector General, Division of Licensing and Regulation, shall inform the Department for Social Insurance monthly of a personal care home which receive a conditional rating. This in-

formation shall be provided by the fifth working day of each month for the prior month.

Section 14. Hearings and Appeals. Applicants or recipients of benefits under programs described herein who are dissatisfied with any action or inaction on the part of the cabinet shall have the right to a hearing under 904 KAR 2:055.

Section 15. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Application for Mental Illness or Mental Retardation Supplement", (6/98), Cabinet for Families and Children;

(b) "Monthly Report", (6/98), Cabinet for Families and Children;

(c) "Application for Supplement Program Certification", (6/98), Cabinet for Families and Children; and

(d) "Monthly Statement Certifying Personal Care Homes for the Supplement Program", (6/98), Cabinet for Families and Children.

(2) This material may be inspected, copied, or obtained at the Cabinet for Families and Children, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

DIETRA PARIS, Interim Commissioner

VIOLA P. MILLER, Secretary

CHARLES P. LAWRENCE, Attorney

APPROVED BY AGENCY: April 1, 1998

FILED WITH LRC: April 9, 1998 at 11 a.m.

CABINET FOR FAMILIES AND CHILDREN
Department for Social Services
Division of Family Services
(As Amended at ARRS, June 9, 1998)

905 KAR 1:360. Private child care levels of care.

RELATES TO: KRS 199.640-199.670, 605.090, 610.110

STATUTORY AUTHORITY: KRS 194.050(1), 199.641, EO 96-862

NECESSITY, FUNCTION, AND CONFORMITY: KRS 199.641 authorizes the cabinet to establish the rate of reimbursement for child-caring facilities which is consistent with the level of service provided. Executive Order 96-862, effective July 2, 1996, reorganized [reorganizes] the Cabinet for Human Resources and placed [places] the Department for Social Services and the Child Welfare Program under the Cabinet for Families and Children. This administrative regulation establishes a five (5) [four-(4)] level reimbursement system based on the needs of the child with a reimbursement rate for each level. The function of this administrative regulation shall be to establish procedures whereby each child shall be evaluated to assure classification in the appropriate level of care.

Section 1. Definitions. (1) "Commissioner" means the Commissioner or designee of the Department for Social Services.

(2) "Department" means the Department for Social Services as defined in KRS 199.641.

(3) "Gatekeeper" means the department or agent responsible for making a clinical determination of the level of care necessary to meet a child's treatment and service needs.

(4) ~~"Quality care pilot initiative" means a service-based system of care which allows:~~

~~(a) The selected provider greater flexibility in designing services for the child and family;~~

~~(b) The ability to facilitate more rapid movement of the child through the service system; and~~

~~(c) The ability to customize the delivery of services to each child and family in the least restrictive, and cost effective manner.~~

~~(5) "Referral packet" means the required forms to be submitted to the gatekeeper and private child care providers to determine level of care and placement and contains the following forms:~~

~~(a) DSS-886, Private Child Care Client Inter-Agency Referral;~~

(b) DSS-886A, Application for Referral to Private Child Care;
(c) Achenbach Child Behavior Checklist; and, if a child has been assessed for youth services.

(5) ~~[(6)]~~ ~~[(5)]~~ "Utilization review" means during a child's placement each child's case records and existing documentation shall be examined to identify the child's current level of functioning and assign the appropriate level of care.

Section 2. Levels of Care. ~~[(1)]~~ The department shall establish a ~~five (5)~~ ~~four (4)]~~ level reimbursement system based on the needs of a child in care. Rates of each level of care were based upon the available Department for Social Service budget divided by the average number of children per day at each level.

(1) ~~[(a)]~~ ~~[(1)]~~ Level I children require a routine home environment which provides maintenance, guidance and supervision to meet the needs of the child and ensures the emotional and physical well-being of the child. The rate for Level I shall be forty-one (41) dollars and sixty-three (63) cents [not exceed (be) forty-five (45) dollars] per day.

(2) ~~[(b)]~~ ~~[(2)]~~ Level II children may engage in nonviolent antisocial acts, but be capable of meaningful interpersonal relationships and require supervision in a structured supportive setting with counseling available from professional or paraprofessional staff, educational support, and services designed to improve developmental or normalized social skills. The rate for Level II shall be sixty (60) dollars and thirteen (13) cents [not exceed (be) sixty-five (65) dollars] per day.

(3) ~~[(c)]~~ Level III children may engage in occasional violent acts and may have superficial or fragile interpersonal relationships and require supervision in a structured, supportive environment where level of supervision and support may vary from low to moderate proportional to the child's ability to handle reduced structure. These children may occasionally require intense levels of intervention to maintain the least restrictive environment and require a program which is flexible enough to allow both extended trials of independence when the child is capable and periods of corrective and protective structure during relapse. The rate for Level III shall be ninety-two (92) dollars and fifty (50) cents [not exceed (be) \$100] per day.

(4) ~~[(d)]~~ ~~[(3)]~~ Level IV ~~[(III)]~~ children have both physical and emotional needs and may be at moderate risk for causing harm to themselves and others and require a structured supportive setting with therapeutic counseling available by professional staff and physical, environmental, and treatment programs designed to improve social, emotional, and educational adaptation behavior. The rate for Level IV ~~[(III)]~~ shall be \$124.88 [not exceed (be) \$135] per day.

(5) ~~[(e)]~~ ~~[(4)]~~ Level V ~~[(IV)]~~ children require a highly structured program with twenty-four (24) hour supervision and a specialized setting which can safely and effectively care for severe and chronic medical conditions complicated by behavioral disorders or emotional disturbance. The rate for Level V ~~[(IV)]~~ shall be \$166.50 [not exceed (be) \$180] per day.

~~[(2) The department may establish a quality care pilot initiative in which the per diem rate paid to the provider remains the same throughout the receipt of services regardless of the levels of the service system through which the child progresses. The quality care pilot initiative rate shall be established based on the initial assigned level of care. Upon admission of a child into the pilot the provider shall:~~

~~(a) Assign a targeted length of stay based on the clinical assessment of the child and family;~~

~~(b) Design and implement individualized treatment plan based on the unique needs of each child and family which enhances the department's permanency plan for the child;~~

~~(c) Have the responsibility to decide the range of services provided to each child and family; and~~

~~(d) Notify the department and gatekeeper prior to a child being moved within the service system.]~~

Section 3. Role of the Gatekeeper. The gatekeeper shall be responsible for:

(1) Assessing each child-caring facility to determine what levels of care are provided;

(2) Evaluating each child referred by the department or currently in a child-caring facility to determine classification in the appropriate level of care;

(3) Reevaluating each child within six (6) months after placement in a facility, and every three (3) months thereafter, at which time the child may be reassigned to another level of care or recommended for placement outside the level of care system:

(a) If a child is reassigned to a lower level by the gatekeeper and the child is remaining in the same child-caring facility, the rate for the lower level shall be effective thirty (30) days from the date of the reassigned level ~~[unless the child is in the quality care pilot initiative]~~. If the child is placed in another child-caring facility, the rate for the lower level shall be effective on the day the child is placed.

(b) If a child is reassigned to a higher level by the gatekeeper and the child is remaining in the same child-caring facility, the rate for the higher level shall be effective the day after the reassigned level is made ~~[unless the child is in the quality care pilot initiative]~~. If the child is placed in another child-caring facility, the rate shall be effective on the day the child is placed.

(c) If, after the first six (6) months and before the next scheduled utilization review, the child-caring facility determines a child may be transitioned to a lower level of care, the rate for the current assigned level shall remain in effect until the next scheduled utilization review ~~[unless the child is in the quality care pilot initiative]~~. If the lower level of care is therapeutic foster care, independent living, or other alternative placement, the facility shall notify the department.

(d) If the child-caring facility determines a child is beyond the facility's capacity to provide care, or there is new information previously not considered by the gatekeeper, a request for a redetermination may be made to the gatekeeper prior to the next utilization review;

1. After a redetermination is completed by the gatekeeper, the facility and department shall be notified of the results.

2. If the child-caring facility disagrees with a redetermination made by the gatekeeper, a request for dispute resolution shall be submitted in writing to the department as governed by Section 6 of this administrative regulation.

(4) Monitoring each placement for quality assurance as part of the reevaluation for each child within six (6) months of the placement and every three (3) months thereafter. The gatekeeper shall:

(a) Review the extent to which services provided are in compliance with the child's treatment plan;

(b) Determine if changes in the child's needs are reflected in the child's treatment plan; and

(c) Advise the Division of Licensing and Regulation of discrepancies; and

(5) Maintain ~~[(Maintaining)]~~ an information system for children served which shall include, but not be limited to:

(a) Placement history;

(b) Facility placement;

(c) Cost of services;

(d) Length of treatment; and

(e) Discharge outcomes.

Section 4. Provider Requirements. (1) Providers in the levels of care reimbursement plan shall be licensed under 905 KAR 1:300. Providers shall comply with 905 KAR 1:300, Section 8, Youth treatment center, if providing intensive treatment oriented services.

(2) The provider shall demonstrate its ability to provide services, either directly or by contract, appropriate to the assigned level for that child and shall include:

(a) Room and board including any activity contributing to housing, food, clothing, school supplies, or personal incidentals;

(b) Clinical services include the evaluation and treatment of emotional disorders, mental illness and substance abuse and are directed to the identification and alleviation of disability or distress, related thereto, experienced by a child which follows specific treatment plans targeted to identified problems; and

(c) Support services which include:

1. The identification of resources needed by a child and the coordination of services provided by a range of agencies or professionals;

2. Services which allow a child to cope with the disability or distress;

3. Services which provide access to improving the educational or vocational status of the child; and

4. Services which provide essential elements of daily living.

VOLUME 25, NUMBER 1 – JULY 1, 1998

Section 5. Referral Process. (1) When the family service worker determines a need to place a child with a child-caring facility, a referral packet shall be completed and a copy submitted to the gatekeeper.

(2) The gatekeeper shall determine the appropriate level of care needed, using a needs assessment consistent with one (1) of the five (5) [four (4)] levels, and return the completed DSS-886 Private Child Care Client Inter-Agency Referral Form, to the family service worker within three (3) working days of receipt of the referral packet.

(3) Upon notification of the assigned level of care, the family service worker shall forward the referral packet to potential child-caring facilities.

(4) Once a child-caring facility accepts a child for placement, the family service worker shall complete the DSS-114, Schedule of Payment, herein incorporated by reference, and on the pre-arranged date of placement, transport the child to the facility.

(5) On a monthly basis, the child-caring facility shall submit to the gatekeeper and family service worker a copy of the child's record or a narrative summary including:

- (a) Information regarding the child's adjustment;
- (b) Services provided to both the child and family;
- (c) Progress made toward returning the child home; and
- (d) Future plans for the child.

Section 6. Dispute Resolution. A child-caring facility may request a dispute resolution to a determination made by the gatekeeper in the application of the provisions of this administrative regulation.

(1) A written notice of dispute shall be submitted to the commissioner no later than thirty (30) days after a child-caring facility is notified of a level of care determination. The notice of dispute shall:

- (a) Specify the action being disputed;
- (b) Specify the reasons the child-caring facility believes the level of care determination is unwarranted;
- (c) Include documentation the child-caring facility considers relevant to support the dispute; and
- (d) Specify alternative determinations or actions that may be taken.

(2) The commissioner shall cause the dispute to be reviewed and evaluated and shall:

(a) Notify the facility of the date, time and place for the informal conference within thirty (30) days of the receipt of the notice of dispute. The informal conference with the child-caring facility shall be conducted according to the following procedures:

1. The commissioner shall preside over the informal conference with the child-caring facility.
2. The proceedings shall be recorded.
3. The child-caring facility or an authorized representative may present oral arguments or documentation which are considered relevant to support the facility's contention regarding the assigned level of care.
4. The department staff and the gatekeeper shall explain the department's decision regarding the assigned level of care.
5. The commissioner may question the participants and may permit questions or discussions among participants if that may contribute to reaching a decision regarding the assigned level of care under dispute.

(b) Issue a written decision on the dispute, including findings of fact and conclusions of law, no later than thirty (30) days after the informal conference.

Section 7. Administrative Hearing Process. If the child-caring facility disagrees with the commissioner's decision on the dispute, the facility has the right to an administrative hearing held in accordance with KRS Chapter 13B. The notice of hearing shall comply with KRS 13B.050.

Section 8. Material Incorporated by Reference. (1) The following forms are herein incorporated by reference.

- (a) DSS-114, "Schedule of Payment", edition October 1997 [revised July, 1996];
- (b) DSS-886, "Private Child Care Client Interagency Referral Form", edition [revised] March 1996;
- (c) DSS-886A, "Application for Referral to Private Child Care", edition [revised] September 1996; [and]

(d) DSS-1251A, "Child Placement History Log", Edition September 1996; and

(e) "Achenbach Child Behavior Checklist (CBCL)", edition [revised] January, 1995.

(2) Material incorporated by reference may be inspected and copied at the Department for Social Services, 6th Floor, 275 East Main Street, Frankfort, Kentucky 40621. Office hours are 8 a.m. to 4:30 p.m.

DONNA HARMON, MSW, Commissioner

VIOLA P. MILLER, Secretary

CHARLES P. LAWRENCE, Attorney

APPROVED BY AGENCY: April 8, 1998

FILED WITH LRC: April 13, 1998 at 3 p.m.

ADMINISTRATIVE REGULATIONS AMENDED AFTER PUBLIC HEARING
OR RECEIPT OF WRITTEN COMMENTS

CABINET FOR HEALTH SERVICES
Department for Public Health
Division of Local Health Department Operations
(Amended After Hearing)

902 KAR 8:060. Classification and compensation plans for local health departments of Kentucky.

RELATES TO: KRS 211.170(1),(2), 212.170, 212.870

STATUTORY AUTHORITY: KRS 194.050, 211.1751, 211.1755

NECESSITY, FUNCTION, AND CONFORMITY: KRS 212.170 and 212.870 requires the cabinet to supervise the personnel functions of local health departments. KRS 211.1755 provides that the cabinet shall administer a personnel program for the local health departments. This administrative regulation provides for the classification and compensation plans for local health departments. The classification plan describes the duties and responsibilities, and the minimum requirements of training, experience, and other qualifications that are necessary for the satisfactory performance of the duties of the various jobs performed by local health department employees. The compensation plan provides salary schedules for the various classes with the salary of each class consistent with the functions outlined in the classification specifications and provides requirements which must be met for salary adjustments for employees.

Section 1. Classification Plan. (1) A comprehensive position classification plan shall be established by the department with the advice of the Local Health Department Employment Personnel Council and the local health departments.

(2) The classification plan shall set forth for each class of positions:

- (a) A title;
- (b) A description of the duties and responsibilities;
- (c) The minimum requirements of training and experience; and
- (d) Other qualifications that are necessary or desirable for the satisfactory performance of the duties of the class.

(3) The class specifications shall be descriptive and explanatory and used to allocate positions to classes as determined by their duties or responsibilities. The language of class specifications shall not be construed as limiting or modifying the authority which an appointing authority has to change the duties and responsibilities or assign duties to employees which are of similar kind or quality.

(4) Each position in an agency shall be allocated to one (1) of the classes established by the classification plan.

(5) A reallocation or allocation shall be made to new or existing classes as additional classes are established, abolished, or changed.

(6) The department shall allocate newly established positions to classes upon receipt of a statement of duties, responsibilities, and requirements of the positions from the appointing authority.

(7) The department shall:

(a) Maintain the classification plan by reviewing job descriptions prepared by the appointing authority for appropriate allocation of positions to approved classes; and

(b) Conduct a general review of the classification plan at least annually based on the review of job descriptions and other information.

(8) An agency shall change the classification of an existing position through a reclassification if a material and permanent change in the duties and responsibilities of a position occurs and the change in the duties and responsibilities are characteristic of a different classification.

(a) The employee within a position at the time it is reclassified shall serve with the same status obtained before the position was reclassified.

(b) A reclassification shall not be permitted during the initial employment probationary period.

(9) The department shall change the allocation of existing positions if it is determined that the position is incorrectly allocated and there has been no substantial change in duties from those in effect

when the position was originally classified. If a position is reallocated, the employee within the class of position shall be entitled to serve with the same status obtained before the position was reallocated.

(10) The department shall maintain a master set of all approved class specifications. The department shall provide each appointing authority with a set of the class specifications.

Section 2. Compensation Plan. (1) The department shall establish a compensation plan with the advice of the Local Health Department Employment Personnel Council and the local health departments. The plan shall take into consideration the following:

(a) Evaluation of the complexity of the duties and responsibilities of the various classes as described by the classification plan provided for in Section 1 of this administrative regulation;

(b) Financial conditions of the agencies;

(c) Experience in recruiting for positions;

(d) Prevailing rates of pay for services of similar kind and quality;

(e) Benefits received by employees; and

(f) Consistency in application among local health departments.

(2) The compensation plan shall include minimum, intermediate, and maximum rates of pay for the various classes within the classification plan. The compensation plan shall also be used to determine salary adjustments provided for under this administrative regulation and under what circumstances salary adjustments may exceed the maximum.

(3) The department shall annually review and amend as necessary the compensation plan with the advice of the Local Health Department Employment Personnel Council and local health departments. Amendments shall include changes in minimum, midpoint, and maximum salary levels for respective classifications of the classification plan and the manner in which salary adjustments, as appropriate, shall be granted.

(4) The entrance salary of any employee entering employment shall be at the minimum of the range established for the class to which the employee is appointed unless otherwise approved by the department.

(5) A new minimum entrance salary may be established by an agency with the approval of the department if it is determined that it is not possible to recruit qualified employees for a class of positions at the established entrance salary. Appointments to the position may be made within the new salary range applicable to the class. If appointments are made at the new established minimum entrance salary, employees of the agency in the same class paid at a lower salary shall have their salaries adjusted to the newly established minimum entrance salary.

(6) The department may approve a higher entrance salary for new employees entering professional, technical, or clerical positions if the individual possesses qualifications in training and experience that exceed [above] the minimum required for the class as follows:

(a) Two (2) percent salary adjustment, not to exceed the midpoint, for each year of experience and appropriate education or training in excess of the minimum requirements for the respective classification; or

(b) Other qualifications established by the department with the advice of the council and local health departments.

(7) Employees possessing the same qualifications in the same class of positions, in the same agency, and who are paid below the salary level as adjusted, of the newly appointed employee, shall have their salary adjusted to the approved entrance salary level.

(8) If a former employee is reinstated or reemployed in a class for which he was previously employed, the appointing authority may make an appointment at the same pay rate the employee had been paid at the termination of service. An appointing authority may reemploy a former employee at a higher salary rate than previously if justified on the basis of:

(a) Additional qualifications acquired by the employee;

(b) Established minimum entrance salary above the former salary;

or

(c) Compensation plan changes.

Section 3. Salary Adjustments. (1) The appointing authority shall grant an employee a five (5) percent increase in salary upon successful completion of the required initial employment probationary period. The salary adjustment shall take effect the first pay period following completion of the probationary period. An employee shall not be given an original probationary increment more than once for successful completion of the probationary period in the same classification.

(2) The agency may, at the beginning of each fiscal year, annually establish a standard salary adjustment rate, not to exceed five (5) percent, for which all employees shall be eligible and given consideration based on documented satisfactory job performance.

(a) The salary adjustment shall be given to each full-time and designated part-time 100 hour employee at the beginning of the first [full] pay period following twenty-six (26) [full] pay periods of [continuous] service during which the employee earned annual and sick leave provided by 902 KAR 8:120 since the established anniversary date. An employee designated as part time shall receive the salary adjustment after twenty-six (26) pay periods of service.

(b) If an agency does not grant an annual increment no outstanding meritorious lump sum payment shall be approved.

(3) An appointing authority may deny an annual increment to an employee for the following reasons;

- (a) Documented unsatisfactory work performance;
- (b) Excessive absenteeism;
- (c) Excessive tardiness;
- (d) Record of disciplinary action; or
- (e) Failure to cooperate.

(4) An employee whose annual increment is denied shall be notified by the appointing authority in writing at least two (2) weeks prior to the anniversary date. The employee action for which the annual increment was denied may lead to disciplinary action if not corrected.

(5) An employee's established anniversary date shall be the first day of the first [full] pay period upon completion of twenty-six (26) pay periods of [continuous] service during which the employee earned annual and sick leave provided by 902 KAR 8:120 after initial employment. A designated part-time employee's established anniversary date shall be the first day of the first pay period upon completion of twenty-six (26) pay periods of service.

(6) An employee who is advanced to a higher pay grade through a reclassification of his position shall have his salary increased to the higher of:

- (a) Five (5) percent; or
- (b) The minimum salary assigned to the reclassified position if the employee's salary is below the minimum of the new grade.

(7) An employee returning to duty from leave without pay shall receive an annual increment when the employee has completed twenty-six (26) pay periods of service since the date the employee last received an annual increment.

(8) Annual increment dates shall not change when an employee:

- (a) Is in a position which is assigned a new or different salary grade;
- (b) Receives a salary adjustment as a result of his position being reallocated;
- (c) Is transferred;
- (d) Receives a demotion;
- (e) Is approved for detail to special duty;
- (f) Returns from military leave; or
- (g) Is reclassified; or
- (h) Is promoted.

(9) The appointing authority, with the approval of the department may award any regular [permanent], full-time or part-time employee an outstanding meritorious lump sum payment if:

(a) The employee's acts or ideas resulted in significant financial savings to the local health department, or a significant improvement in service to the citizens; or

(b) The employee's job performance is outstanding.

(10) A lump sum payment shall not exceed eight (8) percent of the employee's current annual salary within a one (1) year consisting of twenty-six (26) full pay periods based on the annual increment date.

(a) The appointing authority may grant two (2) four (4) percent lump sum payments within the same time period but there shall be at least a thirteen (13) pay period interval between requests.

(b) The appointing authority shall submit written justification to the department for the outstanding merit payment to be effective.

(11) If a new or different salary range is made applicable to a class of position, either through a compensation plan change or the establishment of a new minimum entry salary for a classification, persons employed in positions of that class at the effective date of the adjustment shall have their salary placed at least at the minimum entry salary of the new range.

~~[(a) An adjustment may be made to an employee's salary level within the new range not to exceed the rate of increase provided in the established new salary range.~~

~~—(b) An appointing authority shall afford equitable treatment to all employees affected by the adjustment.]~~

(12) An employee may be detailed to special duty on a temporary basis, not to exceed twenty-six (26) pay periods, to occupy a position and assume the job duties of an employee on an approved leave of absence or assume additional job duties for a temporary time period.

(a) An employee who is approved for detail to special duty shall receive a salary increase of five (5) percent over the salary received prior to detail to special duty.

(b) After completion of the special assignment, the employee shall be transferred back to the former classification with the employee's salary reduced to the salary rate received prior to the detail assignment following completion of the special assignment. An employee shall be entitled to all salary increases he would have received had he not been on special assignment.

(13) If an above minimum entrance rate is established by an agency for a specified class based on documented recruitment needs, or a new entrance salary is established by a compensation plan change, the department may approve a salary adjustment for employees in the same class. The adjustment shall not exceed the rate of increase to the newly established minimum. In fixing salaries on an adjustment, an appointing authority shall afford equitable treatment to all employees affected by the adjustment.

(14) The department may approve other salary adjustments with the advice of the Local Health Department Employment Personnel Council and local health departments. Salary adjustments may address special working conditions, after hours adjustment where working hours cannot be adjusted or other specific circumstances.

(15) An appointing authority may request a salary adjustment not to exceed five (5) percent if an employee is assigned permanent job duties and responsibilities which are more complex and difficult than current job duties, but are less than those indicated through a reclassification.

(16) An agency may grant a one (1) time salary adjustment for all [each] employees during the fiscal year. The salary adjustment shall not exceed five (5) percent.

RICE C. LEACH, M.D., Commissioner

JOHN H. MORSE, Secretary

NORA K. MCCORMICK, Attorney

APPROVED BY AGENCY: June 2, 1998

FILED WITH LRC: June 3, 1998 at 2 p.m.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Robert Nelson

(1) Type and number of entities affected: This administrative regulation relates to all local health departments accept the Louisville-Jefferson County Health Department, Northern Kentucky District Health Department, and the Lexington-Fayette County Health Department.

(2) Direct and indirect costs or savings to those affected: None as this administrative regulation provides for the various classifications used to describe the job duties and responsibilities of employees and the salary adjustments permissible.

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received: No comments provided.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received: No comments were provided.

(c) Compliance reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: None
2. Second and subsequent years: None
- (3) Effects on the promulgating administrative body:
 - (a) Direct and indirect costs or savings: None

1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs: None
- (b) Reporting and paperwork requirements: None

(4) Assessment of anticipated effect on state and local revenues: None

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: None

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: None, there were no comments received regarding this administrative regulation.

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: No alternatives were considered as this administrative regulation provides for the classifications used to describe the duties and responsibilities of the employees and salary adjustments permissible.

(8) Assessment of expected benefits: None

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: None

(b) State whether a detrimental effect on environment and public health would result if not implemented: None

(c) If detrimental effect would result, explain detrimental effect: None

(9) Identify any statute, administrative regulation or governmental policy that may be in conflict, overlapping, or duplication: No statute, administrative regulation, or policy is in conflict, overlapping, or duplication.

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? No. Tiering was not applied because the provisions of the administrative regulations would be applied to all affected local health departments.

CABINET FOR HEALTH SERVICES
Department for Public Health
Division of Local Health Department Operations
(Amended After Hearing)

902 KAR 8:070. Recruitment, examination, and certification of eligibles for local health departments of Kentucky.

RELATES TO: KRS 211.170(1),(2), 212.170, 212.870

STATUTORY AUTHORITY: KRS 194.050, 211.1751, 211.1755

NECESSITY, FUNCTION, AND CONFORMITY: KRS 212.170 and 212.870 requires the cabinet to supervise the personnel functions of local health departments. KRS 211.1755 provides that the cabinet shall administer a personnel program for local health departments. This administrative regulation establishes procedures and standards for the recruitment, examination, and certification of individuals for potential employment by local health departments.

Section 1. Recruitment of Eligible Individuals. (1) ~~[For those job classifications in which there is expected to be a considerable and recurring need of eligibles,]~~ The department, with the advice of the council and the local health departments, shall establish a ~~[recruitment]~~ program which shall provide for the recruitment needs of the

~~various agencies. [be both positive and continuous. Under the recruitment plan, applications may be accepted at any time and examinations held whenever and wherever the department deems necessary.]~~

(2) The recruitment plan shall specify the following:

~~(a) The conditions under which applications for potential employment will be received;~~

~~(b) The assessment method or methods [examination method] utilized to select the individual that meets the minimum requirements of education and experience and possesses the knowledge, skills and abilities to perform the job duties and responsibilities of the position;~~

~~(c) The requirements for announcing a vacant position which shall include the following:~~

~~1. The title and minimum salary of the class of position;~~

~~2. Information as to the rates of pay at which appointments are expected to be made;~~

~~3. The types of duties to be performed;~~

~~4. The minimum qualifications of education, training, and experience required;~~

~~5. The date, if required, on which applications are to be received in the agency;~~

~~6. Veteran's preference;~~

~~7. The date, time and place of a written and scored [an] examination for the position if required; and~~

~~8. All other conditions of competition, including the fact that failure in one (1) part of the selection method [examination] shall disqualify an applicant; and~~

~~9. If an agency requires preemployment drug testing, criminal records checking, physical examination or other special conditions upon an offer of employment. [For these job classifications for which continuous recruitment is not needed, special announcements shall be used.]~~

~~(3) An agency shall announce publicly the recruitment effort to fill a position. Based on the type of position to be filled, the notice of the recruitment effort shall be [examinations shall be announced publicly and may be] distributed to one (1) or more of the following: public officials, employment service offices, newspapers, educational institutions, professional and vocational societies, other media and other individuals and organizations as necessary.~~

~~[(4) A public announcement of an examination shall specify:~~

~~(a) The title and minimum salary of the class of position;~~

~~(b) Information as to the rates of pay at which appointments are expected to be made;~~

~~(c) The types of duties to be performed;~~

~~(d) The minimum qualifications required;~~

~~(e) The date, if required, on which applications are to be received in the department;~~

~~(f) Veteran's preference;~~

~~(g) The date, time and place of an examination for the position if required;~~

~~(h) All other conditions of competition, including the fact that failure in one (1) part of the examination shall disqualify an applicant; and~~

~~(i) Other special requirements of federal and state legislation such as the American with Disabilities Act 42 USC 12101 et seq. or Civil Rights Act 42 USC 2000(d).~~

~~(5) An application for employment, form CH-36, "Application for Employment", shall be required of each individual seeking potential employment with an agency. Form CH-36, "Application for Employment", is incorporated by reference and may be obtained, reviewed, and copied at the Department for Health Services, Division of State and Local Health Administration, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday during the office hours of 8 a.m. and 4:30 p.m.~~

~~(6) Except in continuous recruitment programs, an application for employment shall be mailed to the department on or before the closing date specified in the announcement as published by the agency or postmarked before midnight on that date.]~~

~~(4) [(7)] The department shall be the custodian of all applications.~~

~~(5) [(8)] The department shall refuse to examine an applicant, not qualify an applicant, remove the applicant's name from a register, refuse to certify any eligible on a register, or may consult with the appointing authority in taking steps to remove such person already appointed, if:~~

- (a) The applicant is found to lack specific requirements established for the examination for the class or position;
- (b) The applicant is unable to perform duties of the class;
- (c) Except as provided for in subsection (6) of this section, the applicant has been convicted of a felony, a job related misdemeanor, or a misdemeanor for which a jail sentence may be imposed;
- (d) The applicant has previously been dismissed from any public service for delinquency, misconduct, or other similar cause;
- (e) The applicant made a false statement of material fact in the application;
- (f) The applicant has used or attempted to use political pressure or bribery to secure an advantage in the examination or appointment;
- (g) The applicant has directly or indirectly obtained information regarding examinations to which the applicant was not entitled;
- (h) The applicant has failed to submit a complete application;
- (i) An applicant has failed to submit the application within the prescribed time limits as prescribed by the agency in the published announcement;
- (j) The applicant has taken part in the compilation, administration, or correction of the examination; or
- (k) The applicant has otherwise failed to meet the provisions of this administrative regulation.
- (6) Subject to final department approval, an applicant or employee who has been convicted of a misdemeanor may be employed, or continue employment, if the appointing authority and the department formally determines that:
 - (a) The applicant is otherwise highly qualified and eligible for appointment; and
 - (b) The misdemeanor conviction will not adversely affect the applicant's job performance; and
 - (c) A specific need exists for the appointment or continuing appointment of this applicant or employee; and
 - (d) Every determination made is fully supported by written documentation available for public inspection under the provisions of KRS Chapter 61.
- (7) [(9)] A disqualified applicant shall be promptly notified of the action by letter to the applicant's last known address.

Section 2. Assessment Method(s). [~~Character of Examinations.~~]

- (1) **Assessment method** [~~Examinations~~] shall be practical in nature, constructed to reveal the capacity [~~capability~~] of the applicant for the particular position as well as general background and related knowledge. An assessment method [~~The various parts of the~~] [~~examination~~] may be a written scored examination, oral scored examination, personal interview, physical, or an evaluation of experience and training, a demonstration of skill, or any combination of types so long as applicants for a position are given the same assessment method. [~~examination.~~]
- (2) The recruitment plan required by this administrative regulation shall identify the assessment method [~~examination process~~] for each job classification.
- (3) The department, in conjunction with an agency, may designate monitors as necessary to conduct written scored examinations requiring test scores, and may arrange for the use of public buildings in which to conduct the written examinations. The department shall provide for the compensation of monitors.
- (4) [(3)] If an oral examination is a part of a total examination for a position, the department may appoint one (1) or more impartial oral examination boards as needed.
- (5) [(4)] The department shall notify each applicant by mail of the final rating of the examination requiring test scores as soon as the rating of the examination has been completed and the register established. An eligible, upon written request and presentation of proper identification, shall be entitled to information concerning his relative position on a register.
- [(5)] A vacancy in an agency may be filled by promotion of a qualified permanent employee.
- (6) Promotions shall be based upon individual performance, with due consideration for length of service and capability of the individual to perform the duties and responsibilities of the new position. A candidate for promotion shall be certified by the department as meeting the qualifications for the position.

Section 3. Establishment of Registers [~~and Certification~~] of Eligibles. (1) For continuous recruitment job classifications, as determined by the agency, the department shall establish and maintain registers as follows:

- (a) If a job classification requires an applicant to meet the minimum qualifications and does not require a scored examination an individual shall remain on the register for a period of one (1) year from the date on which the individual is determined qualified; or
- (b) If a job classification requires an applicant to meet the minimum qualifications and does require a scored examination an individual shall remain on the register for a period of one (1) year from the date on which a passing score of seventy (70) or above is achieved, [positions that require an examination the department shall maintain a register of eligible persons who made a passing score of seventy (70). The register shall remain active unless a new examination is administered or the department determines that the register is exhausted. An individual shall remain on the register for a period of one (1) year from the date on which a passing score of seventy (70) or above is achieved.]
- (2) For job classifications that require special announcement, as determined by the agency, the department shall establish and maintain registers as follows:
 - (a) If a job classification requires an applicant to meet the minimum qualifications and does not require a scored examination an individual shall remain on the register for a period of one (1) year from the date on which the individual is determined qualified; or
 - (b) If a job classification requires an applicant to meet the minimum qualifications and requires a scored examination an individual achieving a score of seventy (70) or above shall remain on the register for a period of one (1) year from the date on which the examination was given.
- (3) The names of eligible persons who have taken a scored examination and achieved a score of seventy (70) or above shall be placed on the register in order of their final ratings. If two (2) or more eligibles have final ratings which are identical, their names shall be arranged in the order of their ratings on the written part of the examination, if any, or in order of the date of receipt of application. If applications of eligibles have ratings which are identical are received on the same day, the names shall be placed on the certification in alphabetical order.
- (4) [(3)] If a vacancy exists in a class of positions for which there is no appropriate register, the department may prepare an appropriate register for the class from one (1) or more existing related registers.
- [(4)] The life of each register established as a result of a special announcement shall be one (1) year from the date of examination, if required, or the date upon which the department has completed the evaluation of applicants.
- (5) A register may be deemed to be exhausted by the department if fewer than three (3) eligibles remain on the register. If a register is exhausted, each eligible on the register shall be notified by mail at his last known address.
- (6) The department may remove the name of an eligible from a register:
 - (a) For any of the causes stipulated for disqualifying an applicant provided for under Section 1 of this administrative regulation;
 - (b) If the eligible cannot be located by the postal authorities as evidenced by the return of one (1) notice or a returned notice marked no forwarding address;
 - (c) On receipt of a statement from the eligible stating that he no longer desires consideration for a position;
 - (d) If an offer of a probationary appointment to the class for which the register was established has been declined by the eligible;
 - (e) An eligible receives a probationary appointment;
 - (f) Declines an offer of appointment for which the eligible previously indicated acceptance;
 - (g) The eligible fails to report for a scheduled interview without valid reason;
 - (h) An eligible fails to maintain a current address as evidenced by the return from postal authorities of unclaimed but properly addressed letters; or
 - (i) An eligible has been certified three (3) times to an appointing authority and has not been offered employment.

VOLUME 25, NUMBER 1 – JULY 1, 1998

(7) An eligible who is appointed on a probationary basis shall be removed from all applicable registers. The [An] eligible [who is appointed on a probationary basis] may request in writing to the department requesting that [to have] his name be reinstated to the applicable [any] register at any time before its expiration.

(8) The department shall notify the eligible by mail to his last known address of this action and the reasons therefore.

Section 4. Issuance of Certification of Eligibles. (1) ~~{(9)}~~ For positions requiring an examination requiring test scores and upon receipt of a request, the department shall certify and submit in writing to the appointing authority the names of available persons.

(a) If one (1) position is involved, the names of the persons whose scores fall within the highest ten (10) scores earned on the examination for that class of position shall be certified.

(b) If there are fewer than the number of eligibles specified in this section, the available number shall be certified and appointment will be made if there are as many as three (3) available eligibles for each vacancy.

(c) If more than one (1) position is involved, the department shall certify an additional eligible for each position in excess of one (1).

(d) The department shall certify and submit the five (5) highest available scores on the appropriate promotional register, if one exists.

(2) ~~{(10)}~~ For positions which do not require an examination the department shall certify all names of eligibles to the appointing authority.

(3) ~~{(11)}~~ The appointing authority may request, in writing to the department, special experience, education, or skills different from the minimum requirements of the class. If, after investigation of the duties and responsibilities of the position, the department approves the request, a certification may be issued to the agency containing the names of those individuals who possess the qualifications specified.

(4) ~~{(12)}~~ The life of a certification of eligibles during which action may be taken shall be sixty (60) days from the date of issue unless specified on the certification of eligibles.

(5) A regular ~~{(13)}~~-An employee [with-status], placed in a layoff category, shall have first priority for consideration in filling a vacancy in a classified position for which the employee is qualified in the agency from which laid off.

(a) A regular [status] employee in the layoff category shall indicate in writing to the department that he desires reemployment.

(b) No examination shall be required for reemployment in the same job classification from which the employee was laid off.

(c) If a laid-off regular employee [with-status] desires reemployment in a different job classification, the employee shall meet the requirements and pass the required examinations for the job classifications in which he seeks reemployment.

(d) The life of the reemployment register is one (1) year or until the employee is reemployed, whichever comes first.

Section 5. Application for Employment. (1) An application for employment, form CH-36, "Application for Employment", revised January 1998, shall be required of each individual seeking potential employment with an agency.

(2) Form CH-36, "Application for Employment", is incorporated by reference and may be obtained, reviewed, and copied at the Department for Public Health, Division of Local Health Operations, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday during the office hours of 8 a.m. and 4:30 p.m.

RICE C. LEACH, M.D., Commissioner

JOHN H. MORSE, Secretary

NORA K. MCCORMICK, Attorney

APPROVED BY AGENCY: June 2, 1998

FILED WITH LRC: June 3, 1998 at 2 p.m.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Robert Nelson

(1) Type and number of entities affected: This administrative regulation relates to all local health departments except the Louisville-Jefferson County Health Department, Northern Kentucky Dis-

trict Health Department, and the Lexington-Fayette County Health Department.

(2) Direct and indirect costs or savings to those affected: The costs incurred to the local health departments would depend on the recruitment activities in order to fill vacant positions. This administrative regulation amends current recruitment procedures and requires public announcement of a vacant position in newspapers, college placement offices, employment offices, etc.

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received: No public comments were received regarding costs of this administrative regulation.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received: No comments received.

(c) Compliance reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: The health departments would be required to report recruitment activities in order to establish employment registers. This would not add any additional costs as this is already implemented.

2. Second and subsequent years: Same as above.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: No additional costs to the agency because existing costs would not be impacted as a result of this administrative regulation.

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: No additional paperwork and reporting requirements.

(4) Assessment of anticipated effect on state and local revenues: None

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: None

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: No comments received.

(b) Kentucky: No comments received.

(7) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were considered as this is an existing regulation that is being amended to lessen the difficulty in recruiting potential employees for local health departments.

(8) Assessment of expected benefits: None

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: None

(b) State whether a detrimental effect on environment and public health would result if not implemented: None

(c) If detrimental effect would result, explain detrimental effect: None

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? No. Tiering was not applied as the regulation would be applied to all local health departments.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? No. This regulation relates to local health departments established under the provisions of KRS Chapter 212. Each health department is governed by a board of health appointed by the Secretary of the Cabinet of Human resources. A health department would not be considered a part of local government. Funding of the

public health services and programs is derived from state, federal and local public health tax and other local sources.

(2) State whether this administrative regulation will affect the local government or only a part or division of the local government. The administrative regulation applies to local health departments which are not part of a local government.

(3) State the aspect or service of local government to which this administrative regulation relates. This administrative regulation governs the recruitment and examination procedures of local health departments.

(4) How does this administrative regulation affect the local government or any service it provides? The administrative regulation would have minimum impact on a health department. The administrative regulation would eliminate the earning of compensatory leave by employees determined to be nonexempt under federal and state labor laws. This should reduce the liability of the health department where compensatory leave was allowed to accumulate. It is not known how much overtime would be worked by nonexempt employees beyond the current levels budgeted.

CABINET FOR HEALTH SERVICES
Department for Public Health
Division of Local Health Department Operations
(Amended After Hearing)

902 KAR 8:080. Initial appointment, probationary period, lay-offs, performance evaluation, and the resignation of employees of local health departments.

RELATES TO: KRS 211.170(1), (2), 212.170(4), 212.870

STATUTORY AUTHORITY: KRS 194.050, 211.1755 [211.090; 212.170, 1994 Ky. Acts ch. 336]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 211.170 and 211.1755 [211.090, 212.170, and 212.870] requires the cabinet to supervise the personnel functions of local health departments and [House Bill 631 provides that the cabinet shall] establish policies and procedures for the local health department personnel program through the promulgation of administrative regulations. This administrative regulation describes the various categories of employment and types of appointments permitted under the merit system, the standards under which the appointments are made and requires a probation period following appointment or promotion. This administrative regulation describes an evaluation process to measure employee performance of job duties and responsibilities. Requirements for employee resignations and the process of lay off is also addressed.

Section 1. Initial Appointments. The appointing authority of a local health department shall make an initial appointment of an eligible only from a certification of eligibles issued by the department. ~~[The appointing authority or other designated supervisory staff shall interview and examine applicants certified and shall report the final selection to the department.]~~

Section 2. Provisional Appointments. (1) If there are urgent reasons for filling a position and no appropriate register exists, the appointing authority may submit to the department the name of a person to fill the position pending examination and establishment of a register. If the person's qualifications have been certified by the department as meeting the minimum qualifications, the person may be provisionally appointed to fill the existing vacancy.

(2) No provisional appointment shall be made until the position has been classified and minimum qualifications established for the class of position. The provisional appointment shall not exceed thirteen (13) pay periods from the date of appointment or within two (2) weeks of the date on which the department notifies the appointing authority that an appropriate register has been established, whichever occurs first.

(3) Successive provisional appointments of the same person shall not be permitted. A position shall not be filled by repeated provisional appointments.

(4) Provisional service immediately prior to original appointment may be credited, at the request of the appointing authority, toward the required probationary period.

Section 3. Reinstatement. (1) For a period of time not to exceed three (3) years since termination of employment from an agency, a regular [permanent] employee who has resigned while in good standing, or separated without prejudice, may be eligible for reinstatement to the same position or in a corresponding position without examination, with the same seniority rights and leave status. The individual being considered for reinstatement shall be certified by the department as meeting the current minimum qualifications.

(2) The individual being considered for reinstatement shall not be required to serve a probationary period if the employee has had a break in service of not more than twelve (12) months. If the employee has had a break in service of more than twelve (12) months, the employee shall serve a probationary period. [The annual increment date shall be twenty-six (26) pay periods from the effective date of reinstatement. Accumulated sick leave earned during prior employment with the agency shall be reinstated upon employment and the period of time of prior employment with the agency may be used to determine the rate at which the employee earns annual leave.]

(3) The annual increment date shall be twenty-six (26) pay periods from the effective date of reinstatement.

(4) Accumulated sick leave earned during prior employment with the agency shall be reinstated upon employment and the period of time of prior employment with the agency may be used to determine the rate at which the employee earns annual leave.

Section 4. Emergency Appointments. (1) If an emergency exists that requires the immediate services of one (1) or more persons and it is not possible to secure a person from an appropriate register, or there is no person qualified for provisional appointment, the appointing authority may appoint ~~[with the approval of the department]~~ a person with the approval of the department [or persons at the minimum entrance salary for the class]. An emergency appointment shall not exceed seven (7) pay periods in duration and shall not be renewable. The department may make investigations as necessary to determine if an emergency exists.

(2) The appointing authority shall report an emergency appointment to the department, providing the name of the appointee, rate of pay, length of employment, nature of emergency, and duties to be performed. Separation from service of an emergency appointee shall also be reported.

(3) An emergency appointment shall not confer upon the incumbent a privilege or right to promotion, transfer, or reinstatement to a position under the merit system.

Section 5. Temporary Appointments. (1) If a vacancy occurs in a position having duties of a strictly temporary nature, a certification may be issued by the department of those eligibles, who have indicated a willingness to accept temporary employment in the order of their places on an appropriate register.

(2) The duration of a temporary appointment shall not exceed thirteen (13) pay periods.

(3) The acceptance or refusal of a temporary appointment shall not affect an eligible's standing on a register or eligibility for a probationary appointment.

(4) The period of temporary service shall not constitute a part of the initial employment probationary period.

(5) Successive temporary appointments of an employee to the same position shall not be made.

Section 6. Seasonal Appointment. (1) The appointing authority may, with the approval of the department, establish a position on a seasonal basis for up to nineteen (19) pay periods to accommodate the following:

- (a) Increased work activity of a seasonal nature;
- (b) Work study or job training programs;
- (c) Special projects; or
- (d) Summer employment.

(2) Only an applicant meeting the established minimum requirements for the position may be appointed to a seasonal position.

VOLUME 25, NUMBER 1 – JULY 1, 1998

(3) Successive appointments to the same seasonal position shall not be made.

Section 7. Appointment of an Individual to a Variable [an Itinerant] Hour Position. (1) An agency because of special working requirements in meeting programmatic service needs, may establish a position having variable [itinerant] hours of work.

(2) An agency may appoint an individual who meets the minimum requirements of education and experience established for the position to a variable hour [an itinerant hours] position.

(3) An individual appointed shall be compensated on a fee for service or hourly rate as determined by the agency.

(4) The hours of work of the individual shall not exceed 400 hours per year.

(5) An individual appointed to the variable [itinerant] hour position shall not be considered in the classified service and continued employment shall be subject to the discretion of the appointing authority.

(6) The compensation of the individual employed shall be determined by the appointing authority and in accordance with applicable administrative regulations.

(7) The individual employed shall not be eligible for salary adjustments provided by 902 KAR 8:060.

Section 8. Performance Appraisal. (1) The appointing authority, or designated supervisory staff, shall conduct a performance appraisal for each permanent employee on an annual basis, and for each probationary employee prior to completion of the required probationary period.

(2) An overall rating of "below requirements" or "inadequate" shall require that a new rating of the employee be made within ninety (90) days.

(3) Performance appraisals shall be considered in determining annual and probationary salary advancements and in requesting and approving promotions, demotions, dismissals, and in determining the order of separations due to reduction of work force.

(4) ~~Performance appraisals shall be prepared and recorded on Form CH-40, "Employee Performance Appraisal", revised April 1993. Form CH-40, "Employee Performance Appraisal", is incorporated by reference and may be obtained, reviewed, and copied at the Department for Health Services, Division of Local Health, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, during the office hours of 8 a.m. and 4:30 p.m.]~~

Section 9. [8:] Initial Probationary Period. (1) An employee shall be required to serve a probationary period upon initial employment.

(2) The initial probationary period shall normally be thirteen (13) pay periods except as provided in subsection (3) of this section.

(3) If the employee has satisfactorily completed the initial probationary period based on a performance evaluation, the appointing authority shall notify the department fourteen (14) days prior to the expiration of the initial probationary period that regular status has been confirmed, [as to one (1) of the following actions:

~~(a) The employee has satisfactorily completed the initial probationary period based on a performance evaluation, and permanent status has been confirmed;~~

~~(b) The employee has not successfully performed the duties and completed the probationary period as evidenced by the required performance evaluation, and shall be dismissed without the right of appeal and hearing; or~~

~~(c) If the initial probationary period will be extended because of absences during the probationary period due to medical reasons which cause the employee to be absent from work for twenty (20) days or more during the probationary period.]~~

(4) If the employee is to be dismissed during the initial probationary period, the employee shall be notified at least fourteen (14) days prior to the effective date of dismissal and prior to the expiration of the probation period. The employee may be placed on a register of eligibles by the department if the action is appropriate. The employee shall not be certified to the agency from which separated unless the agency requests otherwise. [The department, with the advice of the Local Health Department Employment Personnel Council, may require an initial probationary period in excess of thirteen (13) pay periods, not to exceed a total probationary period of twenty-six (26) pay periods, for

~~specific classifications, for example, the health environmentalist classification.]~~

(5) The initial probationary period may be extended for the following:

(a) Because of absences during the probationary period due to medical reasons which cause the employee to be absent from work for twenty (20) days or more during the probationary period;

(b) The employee has been unable to complete required job related training course(s). [If the employee is to be dismissed during the initial probationary period, the employee shall be notified at least fourteen (14) days prior to the effective date of dismissal and prior to the expiration of the probation period. The employee may be placed on a register of eligibles by the department if the action is appropriate. The employee shall not be certified to the agency from which separated unless the agency requests otherwise.]

(6) The employee serving a probationary period may be eligible for promotion to a position in a higher class, provided the employee is certified from an appropriate register. If an employee is promoted during a probationary period, the probationary period shall begin with the date the employee was promoted. [of the most recent appointment.]

(7) The department, with the advice of the Local Health Department Employment Personnel Council, may require an initial probationary period in excess of thirteen (13) pay periods, not to exceed a total probationary period of twenty-six (26) pay periods, for specific classifications, for example, the health environmentalist classification.

Section 10. [9:] Probation Period Following Promotion. (1) A promotional probationary period of thirteen (13) full pay periods shall be required of an employee upon promotion.

(2) If an employee is granted leave in excess of twenty (20) consecutive work days during the promotional probationary period, his initial probation shall be extended for the same length of time as the granted leave to cover the absence.

(3) A performance evaluation shall be completed for the employee prior to completing the probationary period to determine the employee's ability to perform successfully the job duties.

(4) If approved by the appointing authority, a promoted employee may request to be reverted to a position in the former class during the probationary period.

(5) An employee who has been promoted but fails to successfully complete the probationary period, as documented by the performance evaluation conducted by the appointing authority, shall revert to a position of his former class. If there is no vacancy in the former class the employee may be reverted to a position in a different class if qualified and certified by the department.

(6) Documentation of the reasons for unsuccessful completion shall be provided to the employee and the department.

(7) If a permanent employee is dismissed for cause while serving a promotional probationary period the employee has the right to appeal the dismissal in accordance with 902 KAR 8:110.

Section 11. [10:] Resignations. (1) An employee who desires to terminate his service with an agency shall submit a written resignation to the appointing authority.

(2) Resignations shall be submitted at least fourteen (14) calendar days before the final working day. A copy of an employee's resignation shall be filed in the employee's personnel file.

(3) Failure of an employee to give fourteen (14) calendar day notice shall, unless otherwise approved by the appointing authority, result in the employee forfeiting payment for accrued annual leave.

(4) An employee's lump sum payment for accumulated annual leave and compensatory time may be held by an agency until the employee who has resigned, retired, or been dismissed, returns agency credit cards, keys to buildings and automobiles or other agency property in the possession of the employee.

Section 12. [11:] Layoffs. (1) An appointing authority may lay off an employee in the classified service if necessary because of shortage of funds, abolishment of a position, or other material change in the duties or the organization of the agency.

(2) Prior to the notification of an employee that he is subject to layoff and prior to the layoff of an employee, the appointing authority

shall submit a layoff plan to the department for approval. The plan shall contain the name of the employee and the reasons, in detail, for the layoff. Upon approval of the plan by the department, the employee shall be notified that he is subject to layoff, and of:

- (a) The reason for the layoff;
- (b) The procedures established for the layoff of employees; and
- (c) The rights granted employees subject to layoff. [The agency shall submit a plan to the department for approval prior to layoff. The plan shall identify the factors considered and identify the employee proposed to be laid off. The agency shall consider at least the following factors:

(a) Seniority of employees;

(b) Results of employee performance evaluation;

(c) Qualification of employees; and

(d) Type of appointment or source of funding.]

(3) An agency established under KRS 212.040 shall undertake the following procedures in assisting an employee subject to layoff:

(a) An employee subject to layoff shall be transferred to a vacant position of the same pay grade, level of duties and responsibilities for which the employee is qualified within the agency.

(b) If a vacancy does not exist, the employee shall be notified of all vacant positions within the agency for which the employee is qualified. The employee shall have the right to be appointed to a vacant position within the agency for which the employee is qualified before any applicant or eligible on a register, except another laid-off employee with greater seniority already on a reemployment register.

(c) If no position is available to an employee subject to layoff, the employee shall be notified in writing that he is to be laid off effective fifteen (15) days after receipt of the notice, and of the rights and privileges granted laid-off employees.

(4) An agency established under KRS 212.850 shall undertake the following procedures in assisting an employee subject to layoff:

(a) An employee subject to layoff shall be transferred to a vacant position of the same pay grade, level of duties and responsibilities for which the employee is qualified within the agency. The position shall be located in the same county as the position from which the employee is subject to layoff;

(b) If a vacancy does not exist, the employee shall be transferred to a vacant position within the agency for which the employee is qualified. The position shall be located in the same county as the position from which the employee is subject to layoff;

(c) If a position is not available, the employee shall be notified of all vacant positions within the agency for which the employee is qualified. The employee shall have the right to be appointed to a vacant position within the agency for which the employee is qualified before any applicant or eligible on a register, except another laid-off employee with greater seniority already on a reemployment register; and

(d) If no position is available to an employee subject to layoff, the employee shall be notified in writing that he is to be laid off effective fifteen (15) days after receipt of the notice, and of the rights and privileges granted laid-off employees.

(5) In the same agency, county and job classification, provisional, temporary, emergency, and probationary employees shall be laid off before regular full-time or regular part-time employees with status. For purposes of layoff, "probationary employee" does not include an employee serving a promotional probation.

(6) If two (2) or more employees subject to layoff in a layoff plan submitted to the department have the same qualifications, the employee with the lesser seniority shall be laid off first.

(7) An employee who is laid off shall be placed on a reemployment register for the class of position from which the employee was laid off and for any class qualified.

(8) For a period of one (1) year, laid-off employees shall be given priority consideration by the agency before any applicant or eligible except another laid-off employee with greater seniority who is already on a reemployment register.

(9) For a period of one (1) year, a laid-off employee shall not be removed from any register unless the employee:

(a) Notifies the department in writing that the employee no longer desires consideration for a position on a register;

(b) Declines two (2) written offers of appointment to a position of the same classification and salary, and located in the same county or agency, as the position from which the employee was laid off;

(c) Without good cause, fails to report for an interview after being notified in writing at least ten (10) calendar days prior to the date of the interview;

(d) Is unable to perform the duties of the class;

(e) Has been convicted of a job related misdemeanor, except that convictions for violations of traffic regulations shall not constitute grounds for disqualification; or

(f) Cannot be located by postal authorities at the last address provided by the laid-off employee.

Section 13. Performance Appraisal Form. (1) Performance appraisals shall be prepared and recorded on Form CH-40, "Employee Performance Appraisal", revised April 1993.

(2) Form CH-40, "Employee Performance Appraisal", is incorporated by reference and may be obtained, reviewed, and copied at the Department for Public Health, Division of Local Health, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, during the office hours of 8 a.m. and 4:30 p.m. [The employee shall be notified of the effective date and given written notice of the reasons for the layoff and the right to be placed on a reemployment register.

(4) No permanent employee shall be separated by layoff if there are provisional, temporary, emergency, seasonal, or probationary employees serving in the agency in the same class.]

RICE C. LEACH, M.D., Commissioner

JOHN H. MORSE, Secretary

NORA K. MCCORMICK, Attorney

APPROVED BY AGENCY: June 2, 1998

FILED WITH LRC: June 3, 1998 at 2 p.m.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Robert Nelson

(1) Type and number of entities affected: This administrative regulation relates to all local health departments except the Louisville-Jefferson County Health Department, Northern Kentucky District Health Department, and the Lexington-Fayette County Health Department.

(2) Direct and indirect costs or savings to those affected: There would be no direct costs associated with this administrative regulation. The administrative regulation describes the types of appointments, requirement for a probationary period, process for a layoff, and performance evaluation.

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received: No public comments were received regarding costs of this administrative regulation.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received: No comments received.

(c) Compliance reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: The health departments would be required to report recruitment activities in order to establish employment registers. This would not add any additional costs as this is already implemented.

2. Second and subsequent years: Same as above.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: No additional costs to the agency because current costs would not be impacted as a result of this administrative regulation.

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: No additional paperwork and reporting requirements.

(4) Assessment of anticipated effect on state and local revenues: None

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: None

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: No comments received.

(b) Kentucky: No comments received.

(7) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were considered as this is an existing regulation that is being amended to lessen the difficulty in recruiting potential employees for local health departments.

(8) Assessment of expected benefits: None

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: None

(b) State whether a detrimental effect on environment and public health would result if not implemented: None

(c) If detrimental effect would result, explain detrimental effect: None

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? No. Tiering was not applied as the regulation would be applied to all local health departments.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? No. This regulation relates to local health departments established under the provisions of KRS Chapter 212. Each health department is governed by a board of health appointed by the Secretary of the Cabinet of Human resources. A health department would not be considered a part of local government. Funding of the public health services and programs is derived from state, federal and local public health tax and other local sources.

(2) State whether this administrative regulation will affect the local government or only a part or division of the local government. The administrative regulation applies to local health departments, which are not part of a local government.

(3) State the aspect or service of local government to which this administrative regulation relates. This administrative regulation governs the types of appointments, requirements for a probationary period, procedures for a layoff, and resignations of local health departments employees.

(4) How does this administrative regulation affect the local government or any service it provides? The administrative regulation would have minimum impact on a health department. The administrative regulation describes the types of appointments, requirement for a probationary period, process for a layoff, and performance evaluation.

CABINET FOR HEALTH SERVICES Department for Public Health Division of Local Health Department Operations (Amended After Hearing)

902 KAR 8:100. Disciplinary procedures applicable for local health department employees.

RELATES TO: KRS 211.170(1), (2), 212.170(4), 212.870

STATUTORY AUTHORITY: KRS 194.050, 211.090, 211.1751, 211.1755 [212.170, 1994 Ky. Acts ch. 336]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 211.090, 212.170, and 212.870 requires the cabinet to supervise the personnel functions of local health departments. House Bill 631 provides that the cabinet shall establish policies and procedures for the local health department personnel program. The administrative regulation governs separations and disciplinary procedures applicable for local health departments. Included are requirements for progressive disciplinary steps, predisciplinary action procedures, and an appeal process.

Section 1. Disciplinary Action. (1) An appointing authority may discipline an employee for lack of good behavior or the unsatisfactory performance of job duties.

(2) ~~[A classified employee with status shall not be disciplined except for cause.~~

~~(3) Situations that may warrant disciplinary action are situations such as:~~

~~(a) Inefficiency or incompetency in the performance of duties;~~

~~(b) Negligence in the performance of duties;~~

~~(c) Careless, negligent, or improper use of local health department property or equipment;~~

~~(d) Failure to maintain satisfactory and harmonious working relationships with the public and coworkers;~~

~~(e) Habitual improper use of sick leave and other leave privileges;~~

~~(f) Habitual pattern of failure to report for duty at the assigned time and place;~~

~~(g) Failure to obtain or maintain a current license or certificate or other qualifications required by law or rule as a condition of continued employment;~~

~~(h) Gross misconduct or conduct unbecoming an employee;~~

~~(i) Willful abuse or misappropriation of funds, property, or equipment;~~

~~(j) Conviction of a felony;~~

~~(k) [Willful abuse or misappropriation of funds, property, or equipment;~~

~~(l) Conviction of a felony;~~

~~(m) Falsification of an official document relating to or affecting employment;~~

~~(n) Participation in any action that would in any way seriously disrupt or disturb the normal operation of the agency, or that would interfere with the ability of management to manage;~~

~~(o) Participation in any action that would in any way seriously disrupt or disturb the normal operation of the agency, or that would interfere with the ability of management to manage;~~

~~(p) [(t)] [(m)] Damage or destruction of agency property;~~

~~(q) [(n)] Abuse towards patients, coworkers, or the public in the performance of duties;~~

~~(r) Abusive behavior towards patients, coworkers, or the public in the performance of duties;~~

~~(s) [(k)] [(e)] Refusal to carry out a reasonable and proper assignment from an authorized supervisor (insubordination);~~

~~(t) [(p)] Reporting to work under the influence of alcohol or illegal drugs, or partaking on the job;~~

~~(u) [(p)] Reporting to work under the influence of alcohol or illegal drugs, or partaking on the job;~~

~~(v) [(t)] [(q)] Sleeping or failure to remain alert during working hours;~~

~~(w) [(m)] [(r)] Violation of confidential information policies of the agency;~~

~~(x) [(n)] [(s)] Prohibited political activity; [and]~~

~~(y) [(e)] [(t)] Unauthorized absence or absence for any period of working without notifying supervisor;~~

~~(z) [(p)] Breach of state law, agency rules, policies, or directives; and~~

~~(aa) [(q)] Failure to report illegal activities of coworkers or supervisors.~~

Section 2. Administering Disciplinary Actions. (1) A classified employee with regular status shall only [not] be disciplined by the appointing authority except for cause.

(2) Except as provided by subsection (4) of this section, an appointing authority shall apply discipline in a progressive manner with each disciplinary action more severe in an effort to correct an employee's performance or behavior problem.

(3) Progressive discipline shall normally consist of the following actions:

(a) Verbal admonishment;

(b) Written admonishment or warning;

(c) Demotion or suspension; and

(d) Dismissal.

(4) One (1) or more of the disciplinary actions stated in subsection (3) of this section may be bypassed by the appointing authority based on the severity of the performance or behavior problem.

Section 3. Predisciplinary Action Hearing. (1) Except as provided in Section 5(1) of this administrative regulation, prior to a demotion provided by 902 KAR 8:090, Section 3(1)(c), suspension, or dismissal, a classified regular employee with status shall be notified in writing of the intent of the agency to demote, suspend, or dismiss the employee. The notice shall also state the following:

(a) The specific reasons for the demotion, suspension, or dismissal including:

1. The statutory, regulatory, or agency policy violation; or
2. The specific action or activity on which the intent to demote, suspend, or dismiss is based; and
3. The date, time, and place of the action or activity; and
4. The name of the parties involved.

(b) That the employee has the right to appear personally, or with counsel if the employee has retained counsel, to reply to the appointing authority regarding the intent to demote, suspend, or dismiss.

(2) No later than five (5) working days after receipt of the notice of intent to demote, suspend, or dismiss, excluding the day the employee receives the notice, the employee may request to appear to reply to the appointing authority.

(3) The meeting shall be held within six (6) working days after receipt of the employee's request to appear before the appointing authority, excluding the day the request is received.

(4) No later than five (5) working days after the employee appears to reply to the intent to demote, suspend, or dismiss, the appointing authority shall determine whether to demote, suspend, or dismiss the employee or to alter, modify, or rescind the intent to demote, suspend, or dismiss. The appointing authority shall notify the employee in writing of the decision.

(5)(a) If the appointing authority determines that the employee shall be demoted, suspended, or dismissed, the employee shall be notified in writing [fourteen (14) days prior to the action] of:

(a) [1-] The effective date of the demotion, suspension, or dismissal; and

(b) [2-] The statutory, regulatory, or agency policy violation; or

(c) [3-] The specific action or activity on which the demotion, suspension, or dismissal is based; and

(d) [4-] The date, time, and place of the action or activity;

(e) [5-] The name of the parties involved;

(f) [6-] That the employee may appeal the demotion, suspension, or dismissal to the Local Health Department Employment Personnel Advisory Council no later than fifteen (15) days after the effective date of the demotion, suspension, or dismissal.

(6) (b) The appointing authority shall provide the employee with the appeal request form.

(6) All appeals shall be submitted on Form CH-41, "Request for Appeal", dated April 1, 1993. Form CH-41, "Request for Appeal", is incorporated by reference and may be obtained, reviewed, and copied at the Department for Health Services, Division of Local Health, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, during the office hours of 8 a.m. and 4:30 p.m.

(7) Upon determining that an employee has committed a flagrant violation and there is a need to diffuse a presently dangerous or disruptive situation, a supervisor may direct the offending employee to vacate the premises. The appointing authority shall, by the most immediate means, contact the department and relate the action taken. A pretermination hearing shall be provided as soon as practicable after removal. The employee may be placed on leave using accumulated leave or on immediate suspension without pay.]

Section 4. Conditions for Bypassing Progressive Discipline and the Issuance of a Notice of Intent for the Suspension or [Immediate] Dismissal of an Employee. (1) An appointing authority may issue a notice of intent for the suspension or dismissal of [immediately dismiss] an employee for serious misconduct infractions.

(2) Examples of misconduct infractions that may be considered serious enough to merit immediate suspension or dismissal include the following:

(a) Threatening, assaulting, fighting with, or harassing a supervisor, another employee, or anyone encountered during the normal course of business;

(b) Stealing or deliberately damaging the agency's, client's, patient's, or another employee's property;

(c) Possessing a weapon at work;

(d) Reporting to work under the influence of alcohol, narcotics, or other drugs, unless the drug was prescribed by a physician; or

(e) Taking unauthorized leave or failing to show up at work without notifying a supervisor for more than three (3) consecutive work days.

(3) The employee shall be notified by the appointing authority regarding the intent to suspend or dismiss.

(4) No later than five (5) working days after receipt of the notice of intent to suspend or dismiss, excluding the day the employee receives the notice, the employee may request to appear personally, or with counsel if the employee has retained counsel to reply to the appointing authority.

(5) The meeting shall be held within six (6) working days after receipt of the employee's request to appear before the appointing authority, excluding the day the request is received.

(6) No later than five (5) working days after the employee appears to reply to the intent to dismiss, the appointing authority shall determine whether to modify, or rescind the intent to dismiss. The appointing authority shall notify the employee in writing of the decision.

(7) If the appointing authority determines that the employee shall be dismissed immediately, the employee shall be notified in writing of:

(a) The effective date of the dismissal; and

(b) The statutory, regulatory, or agency policy violation; or

(c) The specific action or activity on which the dismissal is based; and

(d) The date, time, and place of the action or activity;

(e) The name of the parties involved;

(f) That the employee may appeal the dismissal to the Local Health Department Employment Personnel Council no later than fifteen (15) days after the effective date of the dismissal;

(g) The appointing authority shall provide the employee with the appeal request form.

Section 5. Directive to Vacate Premises. (1) [(b)] If an employee has committed a serious misconduct infraction and there is a need to diffuse a presently dangerous or disruptive situation, a supervisor may direct the offending employee to vacate the premises. The appointing authority shall, by the most immediate means, contact the department and relate the action taken.

(2) A pretermination hearing shall be provided as soon as practicable after removal.

(3) The employee may be placed on leave using accumulated leave or on immediate suspension without pay.

Section 6. [5-] Appeal Form. (1) All appeals shall be submitted on Form CH-41, "Request for Appeal", dated January, 1998.

(2) Form CH-41, "Request for Appeal", is incorporated by reference and may be obtained, reviewed, and copied at the Department for Health Services, Division of Local Health, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, during the office hours of 8 a.m. and 4:30 p.m.

RICE C. LEACH, M.D., Commissioner

JOHN H. MORSE, Secretary

NORA K. MCCORMICK, Attorney

APPROVED BY AGENCY: June 2, 1998

FILED WITH LRC: June 3, 1998 at 2 p.m.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Robert Nelson

(1) Type and number of entities affected: This administrative regulation relates to all local health departments except the Louisville-Jefferson County Health Department, Northern Kentucky District Health Department, and the Lexington-Fayette County Health Department.

(2) Direct and indirect costs or savings to those affected: There would be no direct costs associated with this administrative regula-

tion. The administrative regulation describes the procedures required in the event an employee would be disciplined and examples of situations that cause disciplinary action.

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received: No public comments were received regarding costs of this administrative regulation.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received: No comments received.

(c) Compliance reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: The health departments would be required to report disciplinary actions to the department through an automated personnel system. In addition the local health department would maintain necessary documentation regarding the disciplinary action.

2. Second and subsequent years: Same as above.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: No additional costs to the agency because current costs would not be impacted as a result of this administrative regulation.

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: No additional paperwork and reporting requirements.

(4) Assessment of anticipated effect on state and local revenues: No effect on state and local revenues as this administrative regulation is procedural in providing due process to an employee.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: State agency staff would be responsible for assuring regulation is followed.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: No comments received.

(b) Kentucky: No comments received.

(7) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were considered as this is an existing regulation that is being amended.

(8) Assessment of expected benefits: None

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: None

(b) State whether a detrimental effect on environment and public health would result if not implemented: None

(c) If detrimental effect would result, explain detrimental effect: None

(9) Identify any statute, administrative regulation or governmental policy which may be in conflict, overlapping, or duplication: None identified.

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? No. Tiering was not applied as the regulation would be applied to all local health departments.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? No. This regulation relates to local health departments established under the provisions of KRS Chapter 212. Each health department is governed by a board of health appointed by the Secretary of the Cabinet for Health Services. A health department would not be considered a part of local government. Funding of the public health services and programs is derived from state, federal and local public health tax and other local sources.

(2) State whether this administrative regulation will affect the local government or only a part or division of the local government. The administrative regulation applies to local health departments, which are not part of a local government.

(3) State the aspect or service of local government to which this administrative regulation relates. This administrative regulation governs employee disciplinary procedures used by local health departments.

(4) How does this administrative regulation affect the local government or any service it provides? The administrative regulation would have minimum impact on a health department. The administrative regulation governs employee disciplinary procedures used by local health departments.

CABINET FOR HEALTH SERVICES

Department for Public Health

Division of Local Health Department Operations

(Amended After Hearing)

902 KAR 8:120. Leave provisions applicable to employees of local health departments.

RELATES TO: KRS 211.170(1), (2), 212.170(4), 212.870

STATUTORY AUTHORITY: KRS 194.050, 211.1755

NECESSITY, FUNCTION, AND CONFORMITY: KRS 212.170 and 212.870 requires the cabinet to supervise the personnel functions of local health departments. KRS 211.1755 provides that the cabinet shall establish policies and procedures for the local health department personnel program. This administrative regulation governs the leave provisions applicable for employees of local health departments. These provisions address hours of work, earning of annual and sick time, holiday schedules, other leave provisions and the earning of compensatory time.

Section 1. Hours of Work. (1) The normal work week shall consist of thirty-seven and one-half (37.5) hours per week.

(a) The appointing authority shall establish the hours of work and days of work, of the agency or specific employees and may be changed by the appointing authority to provide for flexibility in meeting particular work requirements of the agency or specific employees whose schedules may require them to work different hours.

(2) All hours worked in excess of the thirty-seven and one-half (37.5) hours during the established work week shall be approved by the appointing authority and subject to compensatory time and overtime provisions of this administrative regulation.

(3) The standard pay period shall consist of seventy-five (75) hours.

(4) An appointing authority may establish a position having special conditions of employment based on the needs of the agency with the approval of the department.

(5) The employee appointed, transferred, or who requests consideration for special conditions shall acknowledge acceptance of the special conditions in writing.

(6) Special conditions may include the following:

(a) If annual leave and sick leave may be earned and at a rate based on the hours worked;

(b) Methods of payment of earned compensation that may be prorated; and

(c) Arrangements for handling nonwork time that may occur with the specific job responsibilities.

Section 2. Earning of Annual Leave. (1) Each full-time employee except seasonal, temporary, and emergency employees shall be allowed to earn annual leave credit at the following rate:

Years of Service	Annual Leave Hours Earned Per Pay Period/Per Year
0 to 5 years	3.5 hours per pay period/91.0 hours per year
5 to 10 years	4.4 hours per pay period/114.4 hours per year
10 to 15 years	5.2 hours per pay period/135.2 hours per year
15 to 20 years	6.1 hours per pay period/158.6 hours per year

VOLUME 25, NUMBER 1 – JULY 1, 1998

[&-over]
20 years & over 7.0 hours per pay period/182 hours per year

(2) Annual leave for full-time employees shall accrue only when an employee has been in pay status at least thirty-seven and one-half (37.5) hours of the standard pay period. The employee shall be credited with additional leave credit upon the first day of the pay period following the pay period in which the leave was earned.

(3) Each part-time employee except a seasonal, temporary, or emergency employee, designated as serving on a part-time 100 hour basis, who works at least twenty-three (23) hours each pay period, [an average of 100 hours a month] shall earn annual leave credit at the following rate:

Years of Service	Annual Leave Hours Earned Per Pay Period/Per Year
0 to 5 years	2.1 hours per pay period/54.6 hours per year
5 to 10 years	2.6 hours per pay period/67.6 hours per year
10 to 15 years	3.1 hours per pay period/80.6 hours per year
15 to 20 years	3.6 hours per pay period/93.6 hours per year
[&-over]	
20 years & over	4.2 hours per pay period/109.2 hours per year

(4) In computing years of total service for determining the rate of earning annual leave for designated part-time 100 hour employees, only those months during which the employee was designated as a full-time, part-time 100 hour or was on educational leave with pay shall be used.

(5) Annual leave shall accrue only if an employee is working or on authorized leave with pay. Annual leave shall not accrue when an employee is on authorized educational leave with pay.

(6) The maximum amount of annual leave earned by full-time employees that may be accumulated and carried forward to the next calendar year shall not exceed the following amounts:

Years of Service	Maximum Amount
0 to 5 years	225.0 hours
5 to 10 years	277.5 hours
10 to 15 years	337.5 hours
15 to 20 years	390.0 hours
Over 20 years	450.0 hours

(7) The maximum amount of annual leave for a designated part-time 100 hour employee who works an average of 100 hours per month that may be accumulated and carried forward to the next calendar year shall not exceed the following amounts:

Years of Service	Maximum Amount
0 - 5 years	120 hours
5 - 10 years	148 hours
10 - 15 years	180 hours
15 - 20 years	208 hours
Over 20 years	240 hours

(8) Except as provided for in Section 3(8) of this administrative regulation, annual leave earned in excess of that which is allowed to be accumulated shall be converted to sick leave and credited during the first pay period following the end of the calendar year. Annual leave shall not be granted in excess of that earned.

Section 3. Use of Annual Leave Credit. (1) An employee who has accumulated annual leave credit, upon request and approval of the appointing authority, shall be granted leave subject to the operating requirements of the agency.

(2) Employees shall be charged with annual leave for absence only on days upon which they would otherwise work and receive pay.

(3) Absence for a fraction or part of a day that is chargeable to annual leave shall be charged in fifteen (15) minute periods.

(4) Employees shall be paid a lump sum for accumulated annual leave, not to exceed the maximum amounts as set forth in Section 2 of this administrative regulation, if separated by proper resignation, lay-

off, retirement, or changes from full-time or part-time 100 hour to part time.

(5) Upon the death of an employee, the employee's estate shall be entitled to be paid for the unused portion of the employee's accumulated annual leave, not to exceed the maximum amount allowable.

(6) Annual leave shall not be advanced or taken until it is earned.

(7) Absences due to sickness, injury, or disability in excess of accumulated sick leave, may be charged against annual leave if approved by the appointing authority.

(8) An employee who has accumulated annual leave in excess of 275 hours may request payment of an amount of annual leave not to exceed seventy-five (75) hours during the fiscal year of the agency. The requested annual leave payment, if approved by the appointing authority, shall not reduce the employee's balance of annual leave below 275 hours and shall be paid in a manner convenient to the agency.

Section 4. Earning of Sick Leave. (1) A full-time employee, except an emergency employee, shall earn sick leave at the rate of three and one-half (3.5) hours per pay period.

(a) An employee shall have worked or been in pay status for at least thirty-seven and one-half (37.5) hours of the seventy-five (75) standard hours in each pay period in order to accumulate sick leave.

(b) The employee shall be credited with sick leave upon the first day of the pay period following the pay period in which the leave was earned.

(2) An employee designated as a part-time 100 hour employee, except an emergency employee, who works at least twenty-three (23) hours in a pay period [an average 100 hours or more per month] shall earn sick leave at the rate of two and one-tenth (2.1) hours per pay period. A part-time 100 hour employee shall be credited with additional sick leave upon the first day of the pay period following the pay period in which the leave was earned.

(3) A full-time employee completing ten (10) years of total service with an agency shall be credited with seventy-five (75) additional hours of sick leave.

(4) An employee designated as a part-time 100 hour employee completing ten (10) years of total service with an agency shall be credited with forty-five (45) additional hours of sick leave.

Section 5. Uses of Sick Leave Credit. (1) The appointing authority, upon proper request, may grant sick leave with pay to a full-time or designated part-time 100 hour employee with sufficient leave credit, if the employee:

(a) Receives medical, psychiatric, dental, or optical examination or treatment;

(b) Is disabled by sickness or injury;

(c) Is required to provide care for a sick or injured spouse, child, parent, brother, sister, grandparent or grandchild, or mother- or father-in-law [member of his immediate family];

(d) If an employee would jeopardize the health of others at his duty post because of exposure to a contagious disease;

(e) Has lost by death a spouse, parent, child, brother, sister, grandparent, grandchild, mother- or father-in-law, daughter- or son-in-law [member of the employee's immediate family]; or

(f) Is required to take [a member of] the employee's spouse, child, parent, brother, sister, mother- or father-in-law, grandparent or grandchild, [immediate family] for medical, psychiatric, dental, or optical examination or treatment.

(2) Sick leave granted for death in the employee's [immediate] family, as described in subsection (1) of this section, shall be limited to three (3) days or a reasonable extension at the discretion of the appointing authority.

(3) An employee shall file a written application for sick leave with or without pay within a reasonable time. An employee shall request advance approval for sick leave for medical, dental or optical examination and for sick leave without pay. [If possible, an employee shall request sick leave absence with or without pay prior to the intended use.]

(4) Except for an unexpected absence from work because of an [If an employee is unexpectedly required to be absent from work in case of] illness, the employee shall notify the employee's supervisor or other designated person. Failure to do so in a reasonable time period

may be cause for denial of the sick leave for the period of absence or disciplinary action.

(5) An ~~[employee may be required by the]~~ appointing authority may, for good cause and on notice, require an employee to supply ~~supporting evidence in order to receive sick leave. A supervisor's or employee's certificate may be accepted, but a medical certificate may be required signed by a licensed practitioner and [to present a statement in the form of personal affidavit, physician's statement, or other statement]~~ certifying to the incapacity, examination, and treatment during the time for which sick leave was taken. An appointing authority may grant sick leave when the application is supported by acceptable evidence.

(6) The following licensed practitioners shall be used in providing verification of an absence:

- (a) Doctor of medicine;
- (b) Doctor of osteopathy;
- (c) Podiatrist;
- (d) Dentist;
- (e) Clinical psychologist;
- (f) Optometrist;
- (g) Chiropractor;
- (h) Nurse practitioner;
- (i) Nurse midwife; or
- (j) Certified Christian Science monitor.

(7) If an employee requests leave in excess of five (5) working days a statement from the employees' licensed practitioner [physician] shall accompany the request for leave. The physician statement shall contain the following:

(a) In the licensed practitioner's [physician's] judgement the employee is incapable of performing the essential duties of the job;

(b) Length of time that the licensed practitioner [physician] would estimate that the employee's illness or disability will last;

(c) Restrictions which would render the employee in the licensed practitioner's [physician's] judgement incapable of performing the essential duties of the job; and

(d) Special considerations that the licensed practitioner [physician] recommends be applied to accommodate the employee once released to return to work.

(8) ~~[(7)]~~ An appointing authority may place an employee, who fails to provide a medical statement upon request, on sick leave if:

- (a) The employee's health might jeopardize others; or
- (b) The employee's health prevents performance of his duties and responsibilities; and

(c) Who on request fails to produce a satisfactory medical certificate.

(9) ~~[(9)]~~ Absence for a fraction or part of a day that is chargeable to sick leave shall be charged in fifteen (15) minute periods.

(10) ~~[(9)]~~ An employee who is transferred or otherwise changed from one (1) agency to another shall retain accumulated sick leave in the receiving agency.

(11) ~~[(10)]~~ Former employees who are reinstated or reemployed shall have their previous rate of earning annual leave [accumulated] and unused sick leave balances reinstated.

(12) ~~[(11)]~~ Sick leave may be utilized in cases of absence due to illness or injury for which worker's compensation benefits are received for lost time to the extent of the differences between these benefits and the employee's regular salary.

Section 6. Maternity Leave. (1) The appointing authority shall grant a maternity leave of absence to an employee because of pregnancy. Maternity leave shall not exceed twelve (12) weeks [seven (7) pay periods], unless the appointing authority approves additional maternity leave provided the total leave does not exceed twenty-six (26) pay periods.

(2) The employee on maternity leave shall use accumulated sick leave credit if available, only for the period of time medically necessary to be absent from work as indicated by the certification of a licensed practitioner.

(a) If sick leave is not available, the employee shall use accumulated annual leave. The employee may use [and] compensatory time if available.

(b) If all leave credit is exhausted, the employee shall be placed on leave without pay.

(3) If an employee is approved for maternity leave that extends beyond the period of absence required by the employee's licensed practitioner, only accumulated annual and compensatory time may be used. If accumulated annual and compensatory leave is not available the employee shall be placed on leave without pay. [The employee shall submit a written request for maternity absence which shall include a doctor's statement indicating the expected date of delivery.]

(a) The request shall be submitted to the appointing authority as soon as practical to allow for adjustments in the work schedule during the employee's absence.

(b) Additional information from the employee's doctor may be required if there are complications and the period of absence begins sooner than agreed, extends further than agreed, or requires the use of maternity leave beyond the normal seven (7) pay periods.]

(4) The employee shall submit a written request for maternity absence, which shall include a statement from a licensed practitioner indicating the expected date of delivery.

(a) The request shall be submitted to the appointing authority as soon as practical to allow for adjustments in the work schedule during the employee's absence.

(b) Additional information from the employee's licensed practitioner may be required if there are complications and the period of absence begins sooner than agreed, extends further than agreed, or requires the use of maternity leave beyond [the normal] twelve (12) weeks.

Section 7. Sick Leave Without Pay. (1) An appointing authority may approve sick leave without pay upon request of an employee for reasons provided for in Section 6 of this administrative regulation and this section.

(2) An employee shall have used accumulated annual, sick, and compensatory leave credit prior to approved leave without pay.

(3) The amount of continuous sick leave without pay approved by an appointing authority shall not exceed twenty-six (26) pay periods.

(4) If an employee approved for leave with pay exhausts accumulated annual, sick, and compensatory leave credit, the employee shall be placed on sick leave without pay, provided the total absence does not exceed twenty-six (26) pay periods.

(5) The appointing authority may require periodic ~~[doctor's]~~ statements from a licensed practitioner during the sick leave without pay period attesting to the employee's inability to perform the essential functions of the employee's job duties with or without reasonable accommodation.

Section 8. Return from Sick Leave With or Without Pay. (1) At the termination of sick leave with pay not exceeding thirteen (13) pay periods, the appointing authority shall return the employee to his former position. At the termination of sick leave with pay exceeding thirteen (13) pay periods, the appointing authority shall return the employee to a position for which he is qualified and which resembles his former position as closely as circumstance permit. If the employee is unable to perform the essential functions of the position and there is no other vacant position(s) for which the employee qualifies and is able to perform the employee may be laid off.

(2) If an employee on approved sick leave without pay for less than twenty-six (26) pay periods has given notice of his ability to resume his duties, the appointing authority shall return the employee to a position for which he is qualified and which resembles his former position as closely as circumstances permit. If the employee is unable to perform the essential functions of the position and there is no other vacant position for which the employee qualifies and is able to perform the employee may be laid off. [If there is no available position which the employee is qualified or is willing to accept, the employee shall be laid off in accordance with administrative regulation 902 KAR 8:080.]

(3) An employee shall be considered to have resigned if the employee:

(a) Has been on continuous sick leave without pay for twenty-six (26) pay periods; and

(b) Has been requested by the appointing authority in writing to return to work at least ten (10) days prior to the expiration of sick leave; and

(c) Is unable to return to work; or

VOLUME 25, NUMBER 1 – JULY 1, 1998

(d) Has been given priority consideration by the appointing authority for a vacant position with the agency, for which the employee qualifies and is capable of performing its essential functions with or without reasonable accommodation; and

(e) The appointing authority has been unable to place the employee in a vacant position. [An employee who is unable to return to work at the end of one (1) year of sick leave without pay, after being requested by the appointing authority to return to work at least ten (10) days prior to the expiration of sick leave without pay, may be dismissed by the appointing authority.]

Section 9. Sharing of Sick Leave. (1) An employee who has accrued a sick leave balance of more than seventy-five (75) hours may, with the approval of the appointing authority, request the transfer of a specified amount of the employee's sick leave balance in excess of seventy-five (75) hours to another named employee who is authorized to receive sick leave.

(2) The appointing authority, may approve the amount of sick leave received under this section, if any, if:

(a) The employee or a member of his immediate family suffers from a medically certified illness, injury, impairment, or physical or psychiatric condition which has caused, or is likely to cause, the employee to go on leave for at least ten (10) consecutive working days;

(b) The employee's need for absence and use of leave are certified by a licensed practicing physician; and

(c) The employee has exhausted his accumulated sick leave, annual leave, and compensatory leave balances; and

(3) Leave may be transferred from an employee of one agency to an employee within the same agency or may be transferred from an employee of one agency to an employee of another agency. The department shall maintain records of leave transferred between employees and the utilization of transferred leave.

(4) If an employee is on leave transferred under this section, he shall receive the same treatment with respect to salary, wages, and employee benefits.

(5) Salary and wage payments made to an employee while on leave transferred under this section shall be made by the agency employing the person receiving the leave. Leave transferred under this section which remains unused shall be returned, on a prorated basis, to the employees who transferred the leave if the appointing authority finds that the leave is no longer needed and will not be needed at a future time in connection with the illness or injury for which the leave was transferred to an employee in his agency.

(6) No employee shall directly or indirectly intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce any other employee for the purpose of interfering with the employee's right to voluntarily contribute leave when authorized under this section.

Section 10. Court Leave. An employee shall be entitled to a leave of absence from duties, without loss of pay or time, on days during which the employee is subpoenaed by a court to serve as a juror or witness except in those cases where the employee or a member of the employee's family is a party plaintiff. If relieved from duty as a juror or witness during normal working hours, the employee shall return to work.

Section 11. Military Leave. (1) An employee who is an active member of the United States Army Reserve, the United States Air Force Reserve, the United States Naval Reserve, the United States Marine Corps Reserve, the United States Coast Guard Reserve, the United States Public Health Service Reserve, or the Kentucky National Guard shall be relieved from his duties without the loss of pay or time, upon request, to serve under orders on training duty for a period not to exceed seventy five (75) hours in any one (1) calendar year. The appointing authority may require a copy of the orders requiring the attendance of an employee before granting military leave.

(2) The appointing authority shall grant an employee entering military duty a leave of absence without pay for a period of active duty not to exceed six (6) years. Accumulated annual leave and compensatory leave may be paid in lump sum at the request of the employee, upon being placed on leave.

Section 12. Voting Leave. The appointing authority shall allow each employee ample time to vote. The absence shall not be charged against accumulated leave.

Section 13. Special Leave of Absence. (1) An appointing authority may grant special leave for education, training or for other circumstances. [The appointing authority may grant leave without pay for a period or periods not to exceed thirty (30) working days in any calendar year to an employee who has exhausted all accumulated annual, compensatory or sick leave credit, if applicable.]

(2) Leave may be granted for a period not to exceed twenty-six (26) pay periods. [An appointing authority, with the approval of the department, may grant a leave of absence with or without pay for a period not to exceed twenty-six (26) pay periods for the following purposes:

(a) Agency directed or approved educational leave to attend a college, university, or business school for the purpose of training in subjects related to the work of the employee and which will benefit the agency; or

(b) Purposes other than those provided by this section which are deemed to be in the best interest of the agency.]

(3) Leave may be granted with or without pay.

(4) Leave for attendance at a college, university, vocational or business school shall be for training in subjects that:

(a) Relate to the employee's work; and

(b) Will benefit the agency.

Section 14. Special Leave for Investigative Purposes. (1) An appointing authority may place an employee on special leave with pay for investigative purposes pending an investigation of allegations of employee misconduct.

(2) Leave shall not exceed thirty (30) working days.

(3) The employee shall be notified in writing by the appointing authority that he is being placed on special leave for investigative purposes, and the reasons for being placed on leave.

(4) If the investigation reveals no misconduct by the employee:

(a) The employee shall be made whole for the period of the leave; and

(b) Records relating to the investigation shall be purged from agency files.

(5) The appointing authority shall notify the employee, in writing, of the completion of the investigation and the action taken. Notification shall be made to the employee, whether the employee has remained with the agency, or has voluntarily resigned during the interim between being placed on special leave for investigative purposes and the completion of the investigation.

Section 15. Family and Medical Leave. An agency shall comply with the Family and Medical Leave Act, PL 103-3 and CFR 29 Part 825, if applicable.

Section 16. [45:] Absence Without Leave. (1) An employee who is absent from duty without approval shall report the reason for the absence to the employee's supervisor immediately.

(2) Unauthorized or unreported absence shall be considered absence without leave and deduction of pay may be made by the appointing authority for each period of absence.

(3) The absence without leave may constitute grounds for disciplinary action.

(4) An employee who has been absent without leave or notice to the supervisor for more than three (3) working days shall be considered to have resigned the employee's position.

Section 17. [46:] Holidays. (1) Agency full-time employees shall be given a holiday on the following days:

(a) The first day of January and one (1) extra day;

(b) The third Monday in January;

(c) The third Monday in February;

(d) One-half (1/2) day for Good Friday;

(e) The last Monday in May;

(f) The fourth day of July;

(g) The first Monday in September;

(h) The fourth Thursday in November plus one (1) extra day;

- (i) The twenty-fifth of December and one (1) extra day;
- (j) Presidential election day.

(2) If any of the days enumerated in subsection (1) of this section falls on a Saturday, the preceding Friday shall be observed as the holiday. If the day enumerated falls on a Sunday, the following Monday shall be observed as the holiday. If an extra day is provided for it shall be observed as stated by the department.

(3) A full-time employee shall be in pay status on the work day prior to the holiday in order to receive the holiday benefit.

(4) Full-time exempt employees required to work on a holiday shall accrue compensatory time for the time worked.

Section 18. [17:] Earning of Compensatory Time. (1) An employee determined to be exempt under the provisions of the Fair Labor Standards Act, 29 US 206, and Kentucky Wage and Labor Law KRS Chapter 337 authorized by the appointing authority to work in excess of the prescribed thirty-seven and one-half (37.5) hours of duty in one (1) week shall accumulate compensatory time in fifteen (15) minute periods for all excess time worked. The maximum amount of compensatory time that can be accumulated shall be 200 hours.

(2) An employee shall have the prior approval of the appointing authority or the employee's immediate supervisor before compensatory leave may be earned.

(3) A nonexempt employee authorized by the appointing authority to work in excess of the prescribed thirty-seven and one-half (37.5) hours shall be paid at the employee's current salary for each hour not subject to the provisions of the Fair Labor Standards Act, 29 US 206, and Kentucky Wage and Labor Law KRS Chapter 337.

Section 19. [18:] Using Accumulated Compensatory Time. (1) An employee who has accrued compensatory time shall be permitted by the appointing authority to take compensatory time off if practical and upon proper request by the employee.

(2) An employee who has accumulated at least thirty (30) hours of compensatory time may be paid for the accumulated leave by the appointing authority upon written request. If payment is approved by the appointing authority, it shall be at the employee's regular rate of pay and in thirty (30) hour increments.

(3) If an employee has accumulated the maximum amount of compensatory leave, the appointing authority shall pay the employee for at least fifty (50) hours of accumulated compensatory leave at the employee's regular rate of pay and reduce the employee's compensatory leave balance accordingly.

(4) Upon separation from service or transfer to another agency, unused compensatory time shall be reimbursed in a lump sum payment to the employee.

(5) Upon the death of an employee, the employee's estate shall be paid for any unused accumulated compensatory time.

RICE C. LEACH, M.D., Commissioner

JOHN H. MORSE, Secretary

NORA K. MCCORMICK, Attorney

APPROVED BY AGENCY: June 2, 1998

FILED WITH LRC: June 3, 1998 at 2 p.m.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Robert Nelson

(1) Type and number of entities affected: This administrative regulation relates to all local health departments except the Louisville-Jefferson County Health Department, Northern Kentucky District Health Department, and the Lexington-Fayette County Health Department.

(2) Direct and indirect costs or savings to those affected: There would be no direct costs associated with this administrative regulation. The administrative regulation describes the procedures required in the event an employee would be disciplined and the right of the employee to appeal the disciplinary action. Costs would be incurred by a local health department in the event an employee is disciplined and appeals his/her disciplinary action.

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received: No public com-

ments were received regarding costs of this administrative regulation.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received: No comments received.

(c) Compliance reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: The health departments would be required to report disciplinary actions to the department through an automated personnel system. In addition the local health department would maintain necessary documentation regarding the disciplinary action.

2. Second and subsequent years: Same as above.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: No additional costs to the agency because current costs would not be impacted as a result of this administrative regulation.

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: No additional paperwork and reporting requirements.

(4) Assessment of anticipated effect on state and local revenues: No effect on state and local revenues as this administrative regulation is procedural in providing due process to an employee.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: State agency staff would be responsible for assuring regulation is followed.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: No comments received.

(b) Kentucky: No comments received.

(7) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were considered as this is an existing regulation that is being amended.

(8) Assessment of expected benefits: None

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: None

(b) State whether a detrimental effect on environment and public health would result if not implemented: None

(c) If detrimental effect would result, explain detrimental effect: None

(9) Identify any statute, administrative regulation or governmental policy which may be in conflict, overlapping, or duplication: None identified.

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? No. Tiering was not applied as the regulation would be applied to all local health departments.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? No. This regulation relates to local health departments established under the provisions of KRS Chapter 212. Each health department is governed by a board of health appointed by the Secretary of the Cabinet for Health Services. A health department would not be considered a part of local government. Funding of the public health services and programs is derived from state, federal and local public health tax and other local sources.

(2) State whether this administrative regulation will affect the local government or only a part or division of the local government. The administrative regulation applies to local health departments, which are not part of a local government.

(3) State the aspect or service of local government to which this administrative regulation relates. This administrative regulation gov-

erns employee disciplinary procedures used by local health departments.

(4) How does this administrative regulation affect the local government or any service it provides? The administrative regulation would have minimum impact on a health department. The administrative regulation governs employee leave provisions for local health departments.

CABINET FOR HEALTH SERVICES
Department for Public Health
Division of Local Health Department Operations
(Amended After Hearing)

902 KAR 8:140. Appointment of a health officer or a health department director of a local health department.

RELATES TO: KRS 211.170(1), (2), 212.280

STATUTORY AUTHORITY: KRS 194.050, 212.1755, 212.170, 212.870[; EO 96-862]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 211.090, 212.170, and 212.870 requires the cabinet to supervise the personnel functions of local health departments. KRS 211.1755 provides that the cabinet shall establish policies and procedures for the local health department personnel program. KRS 212.170, 212.230, and 212.870 describes the requirements for and process of appointing a health officer or a health department director for a local health department. This administrative regulation describes the process of appointing a health officer or a health department director of a health department and the provision of coverage or noncoverage of the merit system. [Executive Order 96-862, effective July 2, 1996, reorganizes the Cabinet for Human Resources and places the Department for Public Health and its programs under the Cabinet for Health Services.]

Section 1. Appointment of Health Officer. (1) An agency shall ~~appoint [be under the direction of]~~ a health officer [appointed] in accordance with the provisions of KRS 212.170, 212.230, or 212.870.

(2) The health officer shall be an unclassified employee and hold office at the pleasure of both the board of health of the agency and the department.

(3) The health officer in the unclassified service shall be subject to the following administrative regulations:

(a) 902 KAR 8:060, Classification and compensation plans for local health departments of Kentucky; and

(b) 902 KAR 8:070, Recruitment, examination, and certification of eligibles for local health departments; and

(c) [(b)] 902 KAR 8:080, Initial appointment, probationary period, and performance evaluation; and

(d) [(e)] 902 KAR 8:120, Leave provisions applicable to employees of local health departments; and

(e) [(d)] 902 KAR 8:140, Appointment of a health officer or a health department director of a local health department.

(4) An individual promoted to the position of health officer may receive a ten (10) percent or fifteen (15) percent increase in salary over the employee's current salary, or to a salary increase to the minimum of the grade assigned to the health officer classification, whichever is higher.

Section 2. Appointment of Health Department Director. (1) In the absence of a health officer provided for in this administrative regulation, an agency shall be under the direction of a health department director who shall meet minimum qualifications of education and experience established by the department.

(2) A qualified individual appointed or promoted to the position of health department director after the effective date of this administrative regulation, shall be employed in the unclassified service and hold office at the pleasure of both the board of health of the agency and the department.

(3) Individuals who are in the position of physician director or health department director shall maintain their status after the effective date of this administrative regulation.

(4) A health department director in the unclassified service shall be subject to the following administrative regulations:

(a) 902 KAR 8:060, Classification and compensation plans for local health departments of Kentucky; and

(b) 902 KAR 8:070, Recruitment, examination, and certification of eligibles for local health departments;

(c) [(b)] 902 KAR 8:080, Initial appointment, probationary period, and performance evaluation;

(d) [(e)] 902 KAR 8:120, Leave provisions applicable to employees of local health departments; and

(e) [(d)] 902 KAR 8:140, Appointment of health officers of local health departments.

(5) An individual promoted to the position of health department director may receive a ten (10) percent or fifteen (15) percent increase in salary over the employee's current salary, or to a salary increase to the minimum of the grade assigned to the appropriate health department director classification, whichever is higher.

Section 3. Removal of a Health Officer or Health Department Director in the Unclassified Service. (1) Except as provided for in Section 2(3) and (4) of this administrative regulation, if a health officer or health department director in the unclassified service is removed by the board of health or the department, he shall be notified in writing, and within fourteen (14) days may make a written request for a pre-termination conference.

(2) If no request for a pretermination conference is made, the removal shall become effective upon the expiration of fourteen (14) days.

(3) If a request for a pretermination conference is made, the pre-termination conference shall be held at the office of the agency within fourteen (14) calendar days after the request is received by the board of health of the agency.

(4) The health officer or director of health shall not be removed until the pretermination conference has been held and a decision rendered by the board of health of the agency and the department.

(5) Upon termination of employment, an employee who was promoted to the health officer or health department director position may revert to the position from which he was promoted or may be considered for a vacant position for which he qualifies in the agency. The employee shall have had at least five (5) years of continuous service with the agency prior to the promotion to be considered for reversion. The reversion shall be subject to the approval of the board of health of the agency.

(6) An employee originally appointed to the health officer or health department director position may only be reverted to a position in the classified service for which he qualifies.

RICE C. LEACH, M.D., Commissioner

JOHN H. MORSE, Secretary

NORA K. MCCORMICK, Attorney

APPROVED BY AGENCY: June 2, 1998

FILED WITH LRC: June 3, 1998 at 2 p.m.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Robert Nelson

(1) Type and number of entities affected: This administrative regulation relates to all local health departments except the Louisville-Jefferson County Health Department, Northern Kentucky District Health Department, and the Lexington-Fayette County Health Department.

(2) Direct and indirect costs or savings to those affected: There would be no direct costs associated with this administrative regulation. The administrative regulation describes the procedures for the appointment of a health officer or health department director.

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received: No public comments were received regarding costs of this administrative regulation.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received: No comments received.

(c) Compliance reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: The health departments would be required to the appointment to the administering agency and subsequent approval by the commissioner.

2. Second and subsequent years: Same as above.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: No additional costs to the agency because current costs would not be impacted as a result of this administrative regulation.

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: No additional paperwork and reporting requirements.

(4) Assessment of anticipated effect on state and local revenues: No effect on state and local revenues as this administrative regulation is.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: State agency staff would be responsible for assuring regulation is followed.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: No comments received.

(b) Kentucky: No comments received.

(7) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were considered as this is an existing regulation that is being amended.

(8) Assessment of expected benefits: None

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: None

(b) State whether a detrimental effect on environment and public health would result if not implemented: None

(c) If detrimental effect would result, explain detrimental effect: None

(9) Identify any statute, administrative regulation or governmental policy which may be in conflict, overlapping, or duplication: None identified.

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? No. Tiering was not applied as the regulation would be applied to all local health departments.

PROPOSED AMENDMENTS RECEIVED AS OF NOON, JUNE 15, 1998

**JUSTICE CABINET
Department of Corrections
Division of Adult Institutions
(Amendment)**

501 KAR 6:040. Kentucky State Penitentiary.

RELATES TO: KRS Chapters 196, 197, 439
STATUTORY AUTHORITY: KRS 196.035, 197.020, 439.470, 439.590, 439.640
NECESSITY, FUNCTION, AND CONFORMITY: KRS 196.035, 197.020, 439.470, 439.590, and 439.640 authorize the Justice Cabinet and Department of Corrections to promulgate administrative regulations necessary and suitable for the proper administration of the department or any division therein. These policies and procedures are incorporated by reference in order to comply with the accreditation standards of the American Correctional Association. This administrative regulation establishes the policies and procedures for the Kentucky State Penitentiary.

Section 1. (1)(a) Kentucky State Penitentiary policies and procedures, June 12, 1998 [November 12, 1997] are incorporated by reference.

(b) It may be inspected, copied, or obtained at the Office of the General Counsel, Department of Corrections, State Office Building, 501 High Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. [There will be no public hearing on these policies and procedures as they are secured policies under the provisions of KRS 197.025 which states that such policies shall not be accessible to the public or inmates.]

(2) Kentucky State Penitentiary policies and procedures include:

KSP 01-02-01	Public Information and Media Communications
KSP 020000-15	Legal Assistance
KSP 02-01-01	Inmate Commissary Program
KSP 02-08-01	Inventory Records and Control
KSP 02-11-01	Requisition and Purchase of Supplies and Equipment
KSP 02-12-01	Inmate Personal Funds
KSP 05-02-01	Management Information System
KSP 06-01-01	Inmate Records (Amended 6/12/98)
KSP 10-02-01	Special Management Units: Assignment, Classification Review and Release
KSP 10-02-05	Special Security Unit
KSP 10-04-01	Special Needs Inmates
KSP 11-03-01	Therapeutic Diets
KSP 11-06-01	Food Service Inspections
KSP 120000-11	Religious Services - Staffing
KSP 120000-18	Religious Services - Religious Programming
KSP 13-01-01	Pharmacy Procedures
KSP 13-02-01	Hospital Services
KSP 13-02-02	Sick Call
KSP 13-02-03	Health Evaluations
KSP 13-02-04	Emergency Medical Procedure
KSP 13-02-05	Consultations
KSP 13-02-08	Medical Records
KSP 13-02-09	Psychiatric and Psychological Services
KSP 13-02-11	Psychological and Psychiatric Treatment Upon Release
KSP 13-02-12	Dental Services for Special Management Units
KSP 13-02-13	Optometric Services
KSP 14-03-01	Marriage of Inmates
KSP 14-04-01	Legal Services
KSP 14-06-01	Inmate Grievance Procedure
KSP 15-01-01	Inmate Grooming and Dress Code
KSP 15-03-01	Award of Meritorious Good Time
KSP 15-06-01	Adjustment Procedures
KSP 16-01-01	Visiting Program
KSP 16-02-01	Inmate Correspondence

KSP 16-03-02	Inmate Telephone Access
KSP 16-04-01	Inmate Packages
KSP 17-01-01	Inmate Personal Property
KSP 17-01-02	Disposition of Unauthorized Property
KSP 17-01-03	Procedures for Providing Clothing, Linens and Other Personal Items
KSP 17-01-04	Property Room, Clothing Storage and Property Inventory Control
KSP 18-01-01	General Guidelines and Functions of the Classification Committee (Amended 6/12/98)
KSP 18-01-02	Functions of the Classification Committee
KSP 18-06-01	Classification Document (Amended 6/12/98)
KSP 18-10-01	Preparole Progress Report
KSP 18-11-01	Transfers to Kentucky Correctional Psychiatric Center (KCPC)
KSP 18-15-01	Protective Custody Unit (Amended 6/12/98)
KSP 19-04-01	Inmate Work Programs and [:] Safety Inspections of Inmate Work Locations (Amended 6/12/98)
KSP 19-04-02	Unit Classification Committee: Inmate Work Assignments (Amended 6/12/98)
KSP 19-05-01	Correctional Industries
KSP 20-04-01	Educational Programs
KSP 22-04-01	Arts and Crafts Program (Amended 6/12/98)
KSP 25-04-01	Inmate Furloughs
KSP 25-08-01	Extended Furloughs
KSP 25-10-01	Discharge of Inmates by Shock Probation

DOUG SAPP, Commissioner

TAMELA BIGGS, Staff Attorney

APPROVED BY AGENCY: June 11, 1998

FILED WITH LRC: June 15, 1998 at 8 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on July 21, 1998, at 9 a.m., in the State Office Building Auditorium. Individuals interested in being heard at this hearing shall notify this agency in writing by July 14, 1998, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the 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. 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: Jack T. Damron or Tamela Biggs, Staff Attorneys, Department of Corrections, 2nd Floor, State Office Building, Frankfort, Kentucky 40601, Telephone Number (502) 564-2024, Facsimile Number (502) 564-6494.

REGULATORY IMPACT ANALYSIS

Contact person: Tamela Biggs, Staff Attorney

(1) Type and number of entities affected: 326 employees of the correctional institutions, 834 inmates, and all visitors to state correctional institutions.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented: None

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented: None

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

VOLUME 25, NUMBER 1 – JULY 1, 1998

1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs: None
- (b) Reporting and paperwork requirements: Policy revisions.
- (4) Assessment of anticipated effect on state and local revenues: None
- (5) Source of revenue to be used for implementation and enforcement of administrative regulation is the funds budgeted for this 1996-1998 biennium.
- (6) Economic impact, including effects of economic activities arising from administrative regulation, on:
 - (a) Geographical area in which administrative regulation will be implemented: None
 - (b) Kentucky: None
- (7) Assessment of alternative methods; reasons why alternatives were rejected: None
- (8) Assessment of expected benefits:
 - (a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: None
 - (b) State whether a detrimental effect on environment and public health would result if not implemented: None
 - (c) If detrimental effect would result, explain detrimental effect: N/A
- (9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
 - (a) Necessity of proposed administrative regulation if in conflict: N/A
 - (b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A
 - (10) Any additional information or comments: None
 - (11) TIERING: Is tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the 14th Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

JUSTICE CABINET Department of Corrections Division of Adult Institutions (Amendment)

501 KAR 6:110. Roederer Correctional Complex.

RELATES TO: KRS Chapters 196, 197, 439

STATUTORY AUTHORITY: KRS 196.035, 197.020, 439.470, 439.590, 439.640

NECESSITY, FUNCTION, AND CONFORMITY: KRS 196.035, 197.020, 439.470, 439.590, and 439.640 authorizes the Justice Cabinet and Department of Corrections to promulgate administrative regulations necessary and suitable for the proper administration of the department or any division therein. These policies and procedures are incorporated by reference in order to comply with the accreditation standards of the American Correctional Association.

Section 1. Incorporation by Reference. (1)(a) Roederer Correctional Complex policies and procedures, June 12, 1998 [November 12, 1997], are incorporated by reference.

(b) They may be inspected, copied, or obtained at the Office of the General Counsel, Department of Corrections, State Office Building, 501 High Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. ~~[There will be no public hearing on these policies and procedures as they are secured policies under the provisions of KRS 197.025 which states that such policies shall not be accessible to the public or inmates.]~~

(2) Roederer Correctional Complex policies and procedures include:

- RCC 01-06-01 Inmate Access to and Communication with RCC Staff
- RCC 01-08-01 Public Information and News Media Access

- RCC 01-10-01 RCC Cooperation with Outside Bodies Including Courts, Governmental Legislative, Executive, and Community Agencies
- RCC 02-01-01 Fiscal Management: Organization
- RCC 02-01-02 Fiscal Management: Accounting Procedures (Amended 6/12/98)
- RCC 02-01-03 Fiscal Management: Agency Funds (Amended 6/12/98)
- RCC 02-01-04 Fiscal Management: Insurance (Amended 6/12/98)
- RCC 02-02-01 Fiscal Management: Budget (Amended 6/12/98)
- RCC 02-02-02 Inmate Control of Personal Funds
- RCC 02-02-03 Storage and Disposition of Monies received on Weekends, Holidays, and Between 4 p.m. and 8 a.m. Weekdays
- RCC 02-02-05 Inmate Canteen Services
- RCC 02-03-01 Fiscal Management: Audits
- RCC 02-04-01 Purchase Orders
- RCC 02-04-02 Processing of Invoices
- RCC 02-06-01 Property Inventory
- RCC 04-01-01 Employee Training and Development (Amended 6/12/98)
- RCC 04-01-02 First Aid and CPR Training (Amended 6/12/98)
- RCC 06-01-01 Offender Records
- RCC 06-03-01 Records Release of Information
- RCC 06-03-02 Storage of Expunged Records
- ~~[RCC 06-03-04 Access to Psychological and Psychiatric Reports (Deleted 6/12/98)]~~
- RCC 06-04-01 Court Trips
- RCC 06-04-02 Receipt of Order of Appearance
- RCC 08-01-01 Fire Prevention [(Added 2/11/98)]
- RCC 09-04-03 Duties and Responsibilities of the Fire and Safety Officer [(Added 2/11/98)]
- RCC 11-01-01 Food Services: General Guidelines
- RCC 11-02-01 Food Service: Security
- RCC 11-03-01 Dining Room Guidelines
- RCC 11-04-01 Food Service: Meals
- RCC 11-04-02 Food Service: Menu, Nutrition and Special Diets
- RCC 11-05-02 Health Requirements of Food Handlers
- RCC 11-06-01 Food Service: Inspections and Sanitation
- RCC 11-07-01 Food Service: Purchasing, Storage and Farm Products
- RCC 12-01-01 Sanitation, Living Conditions Standards, Clothing Issues
- RCC 12-01-02 Bed Areas (Amended 6/12/98)
- RCC 12-01-03 General Guidelines for Living Units
- RCC 12-02-01 Issuance of Clean Laundry and Receiving of Dirty Laundry
- RCC 12-03-01 Personal Hygiene Items: Issuance and Placement Schedule (Amended 6/12/98)
- RCC 12-03-02 Barber Shop Services and Equipment Control
- RCC 12-04-01 Institutional Inspections
- RCC 12-05-02 Use of Noncombustible Receptacle
- RCC 12-06-01 Insect and Vermin Control
- RCC 13-01-01 Organization of Health Services (Amended 6/12/98)
- RCC 13-02-01 Health Maintenance Services: Sick Call and Pill Call
- RCC 13-03-01 Dental Procedures and Sick Call (Amended 6/12/98)
- RCC 13-04-01 Preliminary Health Evaluation and Establishment of Inmate Medical Records (Amended 6/12/98)
- RCC 13-04-02 Medical Intake Processing for Inmates in Hold Status
- RCC 13-05-02 Licensure and Training Standards for Medical Department
- RCC 13-06-01 Suicide Prevention and Intervention Program
- RCC 13-06-03 Emergency Medical and Dental Care Services
- RCC 13-07-01 Health Records
- RCC 13-07-03 Use of Pharmaceutical Products
- RCC 13-07-04 Self-administered Medication Program
- RCC 13-09-01 Notification of Inmate Family in the Event of Serious Illness, Surgery, or Inmate Death
- RCC 13-10-01 Health Education and Special Health Programs
- RCC 13-11-01 Informed Consent

VOLUME 25, NUMBER 1 – JULY 1, 1998

RCC 13-12-01	Mental Health/Provision of Psychiatric Services by KCPK
RCC 13-12-02	Transfer of Inmates to Kentucky Correctional Psychiatric Center
RCC 13-13-01	Identification of Special Needs Inmates
RCC 13-15-01	Medical Restraints
RCC 13-16-01	Specialized Health Services
RCC 13-17-01	Vision Care and Optometry Services
RCC 13-18-01	Infection Control
RCC 14-01-01	Inmate Rights and Responsibilities
RCC 16-01-01	Inmate Visiting
RCC 16-01-03	Extended and Special Visits
RCC 16-02-01	Telephone Communications
RCC 16-03-01	Mail Regulations
RCC 17-01-01	Assessment/Orientation Procedure for Intrasystem Transfers
RCC 17-03-01	Inmate Personal Property and Property Control
RCC 17-05-02	Housing Unit Assignment Assessment/Classification Center
RCC 17-05-03	Notifying Inmate's Families of Admission and Procedures for Mail and Visiting
RCC 17-05-04	Assessment Center Operations Rules and Regulations
RCC 17-05-05	Assessment Center Operations and Reception Programs
RCC 18-01-01	Institutional Classification Committee
RCC 19-01-01	Job Assignments
RCC 20-01-01	Academic Education Program
RCC 20-01-03	Vocational Horticulture Program
RCC 21-01-01	Library Services (Amended 6/12/98)
RCC 22-01-01	Recreation and Inmate Activities (Amended 6/12/98)
RCC 22-03-01	Inmate Clubs and Organizations (Amended 6/12/98)
RCC 23-01-01	Religious Services
RCC 24-01-01	Social Services and Counseling
RCC 25-04-02	Parole Eligibility Dates
RCC 25-05-01	Inmate Discharge Procedures

DOUG SAPP, Commissioner

TAMELA BIGGS, Staff Attorney

APPROVED BY AGENCY: June 11, 1998

FILED WITH LRC: June 15, 1998 at 8 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on July 21, 1998, at 9 a.m., in the Fifth Floor Conference Room of the State Office Building. Individuals interested in being heard at this hearing shall notify this agency in writing by July 14, 1998, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the 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. 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: Jack Damron or Tamela Biggs, Staff Attorneys, Department of Corrections, 2nd Floor, State Office Building, Frankfort, Kentucky 40601, Telephone Number (502) 564-2024, Facsimile Number (502) 564-6494.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Tamela Biggs, Staff Attorney

(1) Type and number of entities affected: 177 employees of the correctional institutions, 657 inmates, and all visitors to state correctional institutions.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented: None

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented: None

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Policy revisions.

(4) Assessment of anticipated effect on state and local revenues: None

(5) Source of revenue to be used for implementation and enforcement of administrative regulation is the funds budgeted for this 1996-1998 biennium.

(6) Economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: None

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: None

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: None

(b) State whether a detrimental effect on environment and public health would result if not implemented: None

(c) If detrimental effect would result, explain detrimental effect: N/A

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed administrative regulation if in conflict: N/A

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A

(10) Any additional information or comments: None

(11) **TIERING:** Is tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the 14th Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

EDUCATION, ARTS, AND HUMANITIES CABINET

Kentucky Board of Education

Department of Education

Bureau for Management Support Services

(Amendment)

702 KAR 7:065. Designation of agent to manage high school interscholastic athletics.

RELATES TO: KRS 156.070

STATUTORY AUTHORITY: KRS 156.070

NECESSITY, FUNCTION, AND CONFORMITY: KRS 156.070 requires the Kentucky Board of Education (KBE) to manage and control the common schools, including interscholastic athletics in the schools, and authorizes the KBE to designate an agency to manage athletics. This administrative regulation designates an agent for high school athletics; establishes the financial planning and review processes for the agent; and incorporates by reference the bylaws, procedures and rules of the agent.

Section 1. The Kentucky High School Athletic Association (KHSAA) shall be the Kentucky Board of Education's agent to manage interscholastic athletics at the high school level in the common schools, including a private school desiring to associate with KHSAA and to compete with a common school.

Wilmer S. Cody, Commissioner
Kentucky Department of Education

Section 2. To remain eligible to maintain the designation as the agent to manage interscholastic athletics, the KHSAA shall:

- (1) Accept four (4) at-large members appointed by the Kentucky Board of Education to its governing body;
- (2) Sponsor an annual meeting of its member schools;
- (3) Provide for each member school to have a vote on constitution and bylaw changes submitted for consideration at the annual meeting;
- (4) Provide for regional postseason tournament net revenues to be distributed to the member schools in that region participating in that sport, utilizing a share approach determined by the schools within that region playing that sport;
- (5) Require its governing body to establish goals and objectives and perform a self-assessment and submit them annually to the KBE.
- (6) Advise the Department of Education of all legal action brought against the KHSAA;
- (7) Permit a board of control member to serve a maximum of two (2) four (4) year terms with no region represented for more than eight (8) years;
- (8) Employ a commissioner and evaluate that person's performance annually and establish all staff positions upon recommendation of the commissioner;
- (9) Permit the commissioner to employ other personnel necessary to perform the staff responsibilities;
- (10) Permit the Board of Control to assess fines on a member school;
- (11) Utilize a trained independent hearing officer instead of an eligibility committee for an appeal; ~~and~~
- (12) Establish a philosophical statement of principles to use as a guide in an eligibility case; ~~and~~
- (13) Annually, require submission to the KHSAA by each member school and superintendent, as a condition precedent to membership, a written certification of compliance with Title IX.

Section 3. Financial Planning and Review Requirements. (1) KHSAA shall submit the following financial documents to the KBE:

- (a) Draft budget for the next two (2) years in November of each year;
 - (b) Annual audit with KHSAA Commissioner's letter addressing an exception within thirty (30) days of receipt of the audit; and
 - (c) Midyear and end-of-year budget status reports by July 30 and January 30, respectively.
- (2) KHSAA shall submit a strategic plan to KBE by June 1 of each year.
- (3) KHSAA shall submit a midyear and annual report by July 30 and January 30, respectively.
- (4) KHSAA shall complete an annual review of its bylaws by October 30 of each year, including the following:
- (a) Athletic appeals;
 - (b) Eligibility rules;
 - (c) Duties of school officials;
 - (d) Contests; and
 - (e) Requirements for officials and coaches.
- (5) KHSAA shall submit to KBE a report of all athletic appeals and their disposition by September 1 of each year. The annual report on appeals shall include the name of the individual, grade, school, and the action taken by KHSAA.

Section 4. The bylaws, tournament rules, due process procedures, and officials' rules of the KHSAA Handbook, 1998-99 [1997-98] shall apply to high school interscholastic athletics in Kentucky.

Section 5. Incorporation by Reference. (1) "Kentucky High School Athletic Association Handbook, 1998-99 [1997-98 Edition]", Kentucky High School Athletic Association, is incorporated by reference.

(2) This material may be inspected and copied at the Office of Legal Services, Department of Education, First Floor, Capital Plaza Tower, Frankfort, Monday through Friday, 8 a.m. through 4:30 p.m.

This is to certify that the chief state school officer has reviewed and recommended this proposed administrative regulation prior to its adoption by the Kentucky Board of Education, as required by KRS 156.070(4).

HELEN MOUNTJOY, Chairperson
KEVIN M. NOLAND, Attorney

Approved by agency: June 10, 1998

FILED WITH LRC: June 10, 1998 at 3 p.m.

PUBLIC HEARING: A public hearing on this proposed administrative regulation shall be held on July 21, 1998, at 10 a.m. in the State Board Room, First Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky. Individuals interested in being heard at this meeting shall notify this agency in writing by July 14, 1998, five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to Mr. Kevin M. Noland, Associate Commissioner, Office of Legal Services, Department of Education, 500 Mero Street, First Floor, Capital Plaza Tower, Frankfort, Kentucky, 40601, phone (502) 564-4474, fax (502) 564-9321.

REGULATORY IMPACT ANALYSIS

Agency Contact: Randy Kimbrough

- (1) Type and number of entities affected: 176 school districts.
- (2) Direct and indirect costs or savings to those affected: None
 - (a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: None
 - (b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: None
 - (c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:
 1. First year following implementation: None
 2. Second and subsequent years: None
 - (3) Effects on the promulgating administrative body:
 - (a) Direct and indirect costs or savings:
 1. First year: None
 2. Continuing costs or savings: None
 3. Additional factors increasing or decreasing costs: None
 - (b) Reporting and paperwork requirements: None
 - (4) Assessment of anticipated effect on state and local revenues: None
 - (5) Source of revenue to be used for implementation and enforcement of administrative regulation: None
 - (6) To the extent available from public comments received, the economic impact, including effects of economic activities arising from administrative regulation on:
 - (a) Geographical area in which administrative regulation will be implemented: None
 - (b) Kentucky: None
 - (7) Assessment of alternative methods; methods why alternatives were rejected: None
 - (8) Assessment of expected benefits:
 - (a) Identify effects on public health and environmental welfare of the geographic area in which implemented and on Kentucky: None
 - (b) State whether a detrimental effect on environment and public health would result if not implemented: None
 - (c) If detrimental effect would occur, explain detrimental effect: This regulation does not relate to the environment or public health.
 - (9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping or duplicative: None
 - (a) Necessity of proposed regulation, if in conflict:
 - (b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(10) Any additional information or comments:

(11) Tiering: Was 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.

EDUCATION, ARTS, AND HUMANITIES CABINET
Education Professional Standards Board
(Amendment)

704 KAR 20:690. Kentucky Teacher Internship Program.

RELATES TO: KRS 161.030

STATUTORY AUTHORITY: KRS 161.028, 161.030

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.030 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 serves to implement the statutory provisions for the beginning teacher internship by establishing the uniform state-wide procedures and processes necessary to carry out the intent of the legislation.

Section 1. Basis for Professional Judgment by the Teacher Intern Committee. (1) In arriving at its professional judgment, the beginning teacher committee shall take into consideration the progress of the teacher intern throughout the school year and, particularly, the level of performance that has been achieved near the end of the intern period. 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) A review of portfolio materials that shall be developed by the teacher intern; and
- (c) A review of the response of the teacher intern to the suggestions and recommendations made by the beginning teacher committee during its meetings with the teacher intern throughout the period of internship.

(2) As a significant part of the process, the beginning teacher committee shall utilize the New Teacher Standards for Preparation and Certification adopted by the Education Professional Standards Board and specified in 704 KAR 20:670.

~~[(3) The beginning teacher committee shall comply with procedures specified in "Guiding and Assessing Teacher Effectiveness: A Handbook for Kentucky Teacher Internship Program Participants", June 1995, which is incorporated by reference in Section 8 of this administrative regulation.]~~

Section 2. Committee Membership Appointment. (1) School districts shall recruit a pool of resource teachers to complete the Kentucky Teacher Intern Program training in order to establish eligibility for appointment to teacher intern committees.

(2) Principal members and resource teachers shall be recommended by the employing school district for appointments by the Office of Teacher Education and Certification to teacher intern committees.

(3) When the internship is established at a nationally or regionally accredited nonpublic school in which a certified principal is not employed, the guidelines of the accrediting organization 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, a written rationale for appointment of the person to serve as the principal member shall be sent to the Office of Teacher Education and Certification for approval.

(4) The Office of Teacher Education and Certification shall consult with representatives of the teacher training institutions with respect to the school districts and the geographical area to be served by teacher educator members on teacher intern committees.

Section 3. Requirements for Time in the Internship and Classroom Assignment. (1) The one (1) year internship may be completed during one (1) of the following:

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

(b) Two (2) semesters of no less than seventy (70) days each of employment in a certified position for which the teacher receives compensation [of classroom-teaching] in more than one (1) school year.

(2) The internship shall be established for each teacher intern whose initial employment begins at any time during the school term except when the date of employment does not allow for completion of at least seventy (70) days of employment during the school year. In such instances, where the period of employment is less than seventy (70) days in a school year, the local school district may 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 such period of employment under an emergency certificate.

(3) The internship shall be established in a classroom which corresponds to the certificate of the teacher intern.

Section 4. Designation and Duties of Chair and Requirements for Timing and Content of Intern Committee Meetings. (1) The principal member of the three (3) person intern 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 collecting and filing reports of the intern committee as required by this administrative regulation.

(2) The chair shall establish a schedule that provides the following sequence of meetings for full-year assignments. This schedule shall be observed except in those circumstances which warrant change and in which the change is agreed to by all parties:

(a) ~~The orientation [first] meeting shall be held [within ten (10) instructional days following the appointment of committee members or completion of training by committee members and shall be held] prior to the conduct of any formal classroom observations of the teacher intern;~~

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

(c) The third meeting shall be held within 120 instructional days following the orientation [first] meeting and shall have been preceded by a second set of classroom observations by all committee members; and

(d) The fourth meeting shall be held within 140 instructional days following the orientation [first] meeting and shall have been preceded by a third set of classroom observations by all committee members.

~~(3) The resource teacher, upon appointment, shall begin to render assistance to the intern.~~

(4) Second semester committees shall establish a meeting schedule that observes the time sequences identified above for the full-year interns but which shall span two (2) school years.

(5) ~~[(4)]~~ Classroom observations conducted by committee members shall be of at least one (1) hour or one (1) class period in duration and in the classroom or at the work station of the teacher intern. Additional classroom observations may be conducted at the option of the committee. All classroom observations shall be scheduled in advance in order to provide adequate time for preparation by the teacher intern.

~~(6) [(5)] All members of the committee shall attend all four (4) meetings of the committee, except that the teacher educator member may be excused for the first meeting].~~

~~(7) [(6)(a)] At the orientation [first] meeting of the intern committee, the following items shall be addressed:~~

~~(a) [1-] Establishment of expectations on the part of the teacher intern and each committee member;~~

~~(b) [2-] Review of the procedures and materials for classroom observations;~~

~~(c) [3-] Explanation of the use of classroom observation data in designing the teacher intern's professional development plan;~~

~~(d) [4-] Explanation of requirements for the portfolio to be developed by the teacher intern;~~

~~(e) [5-] Identification of a general schedule for the events to take place during the internship program; and~~

(f) [(6)] Discussion of suggestions for the work of the resource teacher with the teacher intern.

(8) [(b)] The primary purpose of the second and third committee meetings shall be to provide the teacher intern with information based on classroom observations, review of the portfolio, and reports of the resource teacher that shall support the growth of the teacher intern.

(9) [(e)] The professional development plan (PDP) shall be initiated at the second committee meeting. The PDP shall reflect the intern's views and the committee's suggestions from classroom observations, portfolio review, and informal data. [~~The committee shall initiate review of the portfolio.~~]

(10) [(d)] The third meeting shall include a restatement of expectations for the performance of the teacher intern, restatement of suggestions by the committee members for the assistance by the resource teacher, taking into account the reflections of the intern, and incorporation of these expectations and suggestions for assistance into a modified PDP.

(11) [(e)] The fourth meeting shall include a professional judgment by the committee members on the satisfactory completion of the one (1) year internship.

Section 5. Decision by the Intern Committee, Reporting and Certification Actions. (1) The decision of the intern committee as to satisfactory completion of the internship for all full-year interns shall be reported by the chair to the local school superintendent or other employer and to the Office of Teacher Education and Certification by April 15 or no later than two (2) weeks following the final committee meeting, whichever occurs first.

(2) If a teacher intern's performance is judged by the intern committee to be unsatisfactory, the intern shall have the opportunity to repeat the internship during one (1) additional year contingent upon employment within the period of validity of the statement of eligibility for internship. However, if the teacher does not successfully complete the internship [is not reemployed] during the period of validity of the statement of eligibility, the teacher 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.

(3) If the teacher intern is initially employed during the second semester of a school year, a progress report based upon the orientation meeting and at least one (1) set of classroom observations and report of subsequent committee meeting shall be sent by the committee chairperson to the local school superintendent or other employer and to the Office of Teacher Education and Certification no later than May 15. The teacher intern may continue the internship with employment for a semester during a subsequent school year if employed in any public or nonpublic accredited school.

Section 6. Payments to Committee Members. Within the provisions of the budgetary act, the Office of Teacher Education and Certification shall contract with the local school district, or make other appropriate arrangements, for the direct service of a resource teacher to each teacher intern and for participation in classroom observations and committee meetings. A resource teacher shall not work with more than one (1) intern concurrently. In recognition of service outside the normal working hours, a stipend not to exceed \$1,000 for a year of service shall be paid to the resource teacher. Any services for less than one (1) year or for less than the required number of hours outside the normal working hours shall be reimbursed on a pro-rata basis for the actual services performed. The contract with local school districts shall also provide for 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 intern teacher during normal working hours.

Section 7. Complaints. (1) Complaints by teacher interns shall be reviewed by a committee of four (4) persons named on an annual basis by the Education Professional Standards Board. The review committee shall include one (1) teacher, one (1) principal, one (1) teacher educator, and one (1) employee of the Office of Teacher Education and Certification. No committee member shall take part in any decision in which the member has an interest or is biased.

(2) The committee shall review the written complaint by the teacher intern, all committee reports and additional documentation,

and other written information requested by the committee. Its decision shall be limited to written information of compliance with the following procedural requirements:

(a) At least fifty (50) hours outside normal working hours spent by the resource teacher in assisting the teacher intern;

(b) Assignment of intern committee members in accordance with legal requirements;

(c) Compliance with specified procedures for the timing, content, reporting, and signing of classroom observation forms, intern committee meeting forms, and time forms; and

(d) Substantial agreement between classroom observation reports, professional development plans, committee meeting reports, and the final decision of the committee on satisfactory completion of the internship, with particular emphasis on correlations between the third and fourth meetings of the intern committee.

(3) At least three (3) members of the committee shall be present, or have reviewed all materials and provided a written opinion on the complaint, in order for a decision to be made.

(4) The committee shall make a decision on the complaint within sixty (60) days following the receipt of such complaint, unless good cause exists for additional time.

(5) If the decision of "unsuccessful" by an intern committee is not upheld, the Office of Teacher Education and Certification shall issue the appropriate certificate to the teacher intern.

(6) If the decision of "unsuccessful" by an intern committee is upheld, the Office of Teacher Education and Certification shall issue the statement of eligibility for Internship, unless the intern has exhausted the two (2) year provision for participation in the Kentucky Teacher Internship Program or the period of validity of the statement of eligibility has expired.

Section 8. Incorporation by Reference. (1) "Guiding and Assessing Teacher Effectiveness: A Handbook for Kentucky Teacher Internship Program Participants," June 1998 [1995] edition, is incorporated by reference.

(2) Copies of the Handbook may be inspected, or obtained at the Division of Testing and Internship, Office of Teacher Education and Certification, Kentucky Department of Education, 1024 Capital Center Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

ROSA WEAVER, Chair

ROBERT S. SHERMAN, Attorney

APPROVED BY AGENCY: May 27, 1998

FILED WITH LRC: June 5, 1998 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation will be held July 24, 1998, at 10 a.m. in the 1st Floor Conference Room, Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by July 17, 1998, five work days prior to hearing, of their intent to attend. If no notification 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. 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: Dr. Susan Leib, Office of Teacher Education and Certification, 1024 Capital Center Drive, Frankfort, Kentucky 40601, (502) 573-4606, FAX: (502) 573-1610.

REGULATORY IMPACT ANALYSIS

Contact Person: Rita Osborne

(1) Type and number of entities affected: All persons applying for initial teacher certification in Kentucky

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: None

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: None

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(4) Assessment of anticipated effect on state and local revenues: None

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: State funds.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: None

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: These changes are necessary for more effective implementation of the Kentucky Teacher Internship Program (KTIP).

(8) Assessment of expected benefits: The KTIP will be a more effective program for assessing and assisting beginning teachers.

(a) Identify effects on public health and environmental welfare of the geographical areas in which implemented and on Kentucky: None

(b) State whether a detrimental effect on environment and public health would result if not implemented: None

(c) If detrimental effect would result, explain detrimental effect: N/A

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: None

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: None

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? No. The requirements in this regulation apply to every person applying for teacher certification.

**WORKFORCE DEVELOPMENT CABINET
Department of Vocational Rehabilitation
(Amendment)**

781 KAR 1:030. Order of selection and economic need test for vocational rehabilitation services.

RELATES TO: KRS 151B.190, 34 CFR 361.31(b), (c), 61 Fed. Reg. 24402 (1996), 29 USC 706(8)(A), (15)(A)

STATUTORY AUTHORITY: KRS 151B.185(2), (3), 151B.195(1), 34 CFR 361.31(b), 61 Fed. Reg. 24402 (1996)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 151B.195 requires the Commissioner, Department of Vocational Rehabilitation to promulgate administrative regulations governing the services and administration of the Department of Vocational Rehabilitation. 34 CFR 361.31(b), 61 Fed. Reg. 24402 (1996), requires the department to determine, prior to the beginning of each fiscal year, whether to establish and implement an order of selection for state vocational rehabilitation services. 34 CFR 361.31(c), 61 Fed. Reg. 24402 (1996), established federal guidelines for the imposition of an order of selection. This administrative regulation establishes when an order of selection and an economic need test shall be applied to the provision of vocational rehabilitation services in order to distribute limited funds more equitably over the entire population of otherwise eligible clients.

Section 1. Definitions. (1) "Commissioner" means Commissioner of the Department of Vocational Rehabilitation. ["Client" means an individual who has been determined by an appropriate state unit staff

member to meet the basic conditions of eligibility for vocational rehabilitation services.]

(2) ["Agency" or] "Department" means the Department of Vocational Rehabilitation, and its appropriate staff members who are authorized under state law to perform the functions of the state regarding the state plan and its supplement.

(3) "Eligible individual" means an individual who has been determined by an appropriate state unit staff member to meet the basic conditions of eligibility for vocational rehabilitation services.

(4) "Individual with a most severe disability" means an individual who has a severe disability and who:

(a) Requires intensive long-term support to facilitate the performance of work activities or daily living activities on or off the job which would typically be performed independently if the individual did not have a disability; or

(b) Has serious limitations in four (4) or more functional capacities (such as mobility, communication, self-care, self-direction, interpersonal skills, work tolerance, or work skills) in terms of an employment outcome.

(5) "Permanent functional limitation" means an impairment in activity or function imposed by a disability that:

(a) Is unlikely to be corrected through surgical intervention or medical treatment; and

(b) Differs from a mental or physical condition that can be remedied through the provision of a physical or mental restoration service.

[4] "Commissioner" means Commissioner of the Department of Vocational Rehabilitation.

(5) "Individual with a most severe disability" means an individual who has a severe disability and who:

(a) Requires intensive long-term support to facilitate the performance of work activities or daily living activities on or off the job which would typically be performed independently if the individual did not have a disability; or

(b) Has serious limitations in four (4) or more functional capacities (i.e., mobility, communication, self-care, self-direction, interpersonal skills, work tolerance, or work skills) in terms of an employment outcome.]

Section 2. Economic Need. (1) Economic need shall be considered in determining whether to grant vocational rehabilitation services.

(2) The commissioner may exempt services from the economic needs test if the department is able to provide services to all eligible individuals with severe disabilities pursuant to Section 3 of this administrative regulation, with consideration of applicable comparable benefits as provided in 781 KAR 1:020, Section 2.

(3) The following services shall be excluded from an economic needs test:

(a) Assessment for determining eligibility and vocational rehabilitation needs;

(b) Counseling and guidance and referral services;

(c) Placement;

(4) [A client who does not meet total financial need criteria shall apply 100 percent of the monthly excess household income to the rehabilitation program.

(5)(a) Except as provided in subsection (2) of this section and paragraph (b) of this subsection, residential students at the Carl D. Perkins Comprehensive Rehabilitation Center (CDPCRC) who receive an individual government maintenance subsidy or who have monthly excess household income shall contribute monthly an amount not to exceed the presumed monthly value of in-kind support and maintenance for recipients residing in nonmedical institutions as defined by the Social Security Administration.

(b) The Director of the Carl D. Perkins Comprehensive Rehabilitation Center or a designee may make a hardship exception to the maintenance contribution if agreed upon with the referring counselor.

(5) [(6) Ninety (90) percent of the 1990 Kentucky median gross income as adjusted to family size shall be used as the criterion for] The department's [agency] economic needs test shall be based on the 1998 Kentucky Median Adjusted Gross Income developed by the U.S. Department of Commerce [in figuring the excess monthly household income].

Section 3. Order of Selection. If the commissioner determines that the department [agency] shall be unable to provide services to all eligible applicants, the department [agency] shall implement the order of selection.

(1) An eligible individual [client] previously declared eligible for and receiving vocational rehabilitation services under an individualized written rehabilitation program shall not be affected if the department [agency] implements an order of selection.

(2) The order of selection shall not regulate the provision of information and referral services.

(3) On implementation of the order of selection, the department [agency] shall continue to accept referrals of and applications from individuals with disabilities.

(4) The order of selection shall not regulate the provision or authorization of assessment for determining eligibility.

(5) An applicant shall be declared eligible or ineligible as appropriate.

(6) An eligible individual [client] entering accepted status after implementation of the order of selection shall be assigned to a priority category. If the priority category is open, the individual may be served. If the priority category is closed, the individual's case shall be held in accepted status until the priority category assigned is opened or the order of selection is lifted.

(7) The order of selection policy shall permit immediate reclassification into a higher priority category if circumstances justify the reclassification.

(8) If the department is unable to provide services to all eligible individuals with severe disabilities, the department shall serve eligible individuals with a most severe disability first and then serve eligible individuals with a severe disability on a first-applied, first-served basis, as established by the date of application.

(9) The order of selection described in this section shall be followed with the categories to be served designated at the time of implementation.

(10) The order of selection system shall have six (6) priority categories as follows:

(a) Priority I - eligible individuals with a most severe disability.

(b) Priority Category II - eligible individuals with a severe disability who have serious limitations in three (3) functional capacities.

(c) Priority Category III - eligible individuals with a severe disability who have serious limitations in two (2) functional capacities.

(d) Priority Category IV - eligible individuals with a severe disability who have serious limitations in one (1) functional capacity.

(e) Priority Category V - eligible individuals with a nonsevere disability that results in permanent functional limitations.

(f) Priority Category VI - all other eligible individuals whose disability is nonsevere.

SAM SERRAGLIO, Commissioner

SUE SIMON, Legal Counsel

APPROVED BY AGENCY: June 15, 1998

FILED WITH LRC: June 15, 1998 at 10 a.m.

PUBLIC HEARING: A public hearing on this regulation has been scheduled for July 21, 1998 at 10 a.m. eastern time in the DVR Training Room, 209 St. Clair, Frankfort, Kentucky. However, this hearing will be canceled unless interested persons notify the following office in writing by July 14, 1998, of their desire to appear and testify at the hearing: George Parsons, Department of Vocational Rehabilitation, 209 St. Clair, Frankfort, Kentucky 40601, (502) 564-4440, (502) 564-6745 (FAX).

The Department of Vocational Rehabilitation does not discriminate on the basis of race, color, national origin, sex, disability, age, religion or marital status in training, activities or employment practices in accordance with Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, Section 504 of the Rehabilitation Act of 1973, Title VII of the Civil Rights Act of 1964 and the Americans With Disabilities Act of 1990. The meeting facility is accessible to people with disabilities. The department will provide upon request, reasonable accommodations including auxiliary aids and services necessary to afford individuals with a disability an equal opportunity to participate in all services, programs, and activities. If an interpreter or other auxiliary aid or service is needed, contact George Parsons at the address above.

REGULATORY IMPACT ANALYSIS

Contact person: George Parsons

(1) Type and number of entities affected: All applicants for vocational rehabilitation services from the Department of Vocational Rehabilitation.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographic area in which the administrative regulation will be implemented, to the extent available from the public comments received: None

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: None

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: There will be no direct or indirect savings since any funds conserved would be redistributed among otherwise eligible individuals.

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: There should be no additional reporting or paperwork requirements.

(4) Assessment of anticipated effect on state and local revenues: None

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The department uses state and federal funds with a match ratio of 78.7 federal to 21.3 state dollars.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: None

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were considered. Counsel has advised that the material is restrictive and is designated by KRS Chapter 13A as regulatory in nature.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: None

(b) State whether a detrimental effect on environment and public health would result if not implemented: Not applicable.

(c) If detrimental effect would result, explain detrimental effect: None

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: None

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable

(10) Any additional information or comments:

(11) TIERING: Is tiering applied? No. Federal statutes and regulations require uniformity in rules and regulations dealing with applicants or individuals eligible for vocational rehabilitation services.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 34 CFR 361.

2. State compliance standards. This administrative regulation details the agency standards for an economic needs test and an order of selection for vocational rehabilitation services.

3. Minimum or uniform standards contained in federal mandate. The federal mandate permits a state to restrict access to services based on reasons of economic need; an order of selection is re-

quired when sufficient funds are not available to serve all eligible individuals.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? Yes

5. Justification or imposition of the stricter standards, or additional or different responsibilities or requirements. The Department of Vocational Rehabilitation is financially unable to provide services for all the eligible individuals. An economic needs test and an order of selection must be imposed which will allow available limited funds to be distributed while assuring adequate services will be available to serve individuals with severe disabilities.

**WORKFORCE DEVELOPMENT CABINET
Department for the Blind
(Amendment)**

782 KAR 1:030. Scope and nature of services.

RELATES TO: KRS 163.450 to 163.470, 29 USC, 701, 34 CFR 361

STATUTORY AUTHORITY: KRS 163.470(5), 34 CFR 361.42

NECESSITY, FUNCTION, AND CONFORMITY: KRS 163.470(5) requires the department to establish and implement policies and procedures for carrying out the program of services for the blind and visually impaired. This administrative regulation is necessary to establish the scope, nature, conditions, criteria, and procedures of provided services.

Section 1. Assessment. (1) For the purposes of determining eligibility, assessment may include, but is not limited to:

- (a) Self report;
- (b) Existing data from qualified professionals; or
- (c) New reports or measures deemed necessary by the rehabilitation specialist. ~~(To be eligible for rehabilitative services, an individual shall be examined by a medical specialist qualified in the diagnosis and treatment of functional impairment in terms of employment outcome.)~~

(2) The department may seek a second opinion regarding the determination of impairment and the need for rehabilitative services.

Section 2. Vocational Goal. Services shall be provided in accordance with an individualized, written rehabilitation program that:

- (1) Emphasizes the:
 - (a) Determination; and
 - (b) Achievement of a vocational goal; and
- (2) Is consistent with an individual's:
 - (a) Strengths;
 - (b) Resources;
 - (c) Priorities;
 - (d) Concerns;
 - (e) Abilities;
 - (f) Interests; and
 - (g) Informed choice. ~~(the abilities and capacities of the eligible individual.)~~

Section 3. Vocational Training at Institutions of Higher Education.

(1) A service provided at an institution of higher education shall comply with Section 15 [47] of this administrative regulation on comparable benefits.

(2) The amount paid by the department for tuition shall not exceed the highest rate for tuition charged by an in-state public institution of higher education, unless the eligible individual is in a degree program not offered by an in-state public institution.

(3) The department may pay a fee associated with attendance at an educational institution if the fee is required of an individual who attends the institution.

(4) The department shall pay the cost of books, supplies, tools and other course material in accordance with:

- (a) The need analysis prepared by the student financial aid office of the institution; or
- (b) The actual cost of materials, if a need analysis is not available.

(5) The eligible individual shall maintain full-time status as defined by the institution, unless a status of less than full-time is needed to graduate in the current year.

(6) By the end of the second term or semester and throughout each subsequent term or semester, an eligible individual shall achieve:

- (a) An overall "C" grade average; or
- (b) Standing required for admission, licensure, or certification.

(7) An exception:

(a) May be granted for this subsections (5) and (6) of this section if the eligible individual:

- 1. Has a need or circumstance that renders him unable to maintain those standards; and
- 2. Notifies the counselor of the need or circumstance prior to a change of standing at the institution.

(b) Shall not compromise the program requirement that the employment objective of the client be:

- 1. Realistic; and
- 2. Attainable.

(c) To subsection (6) of this section shall not be extended beyond one (1) year.

~~[(d) Shall be consistent with 34 CFR 80.22.]~~

(8) The eligible individual shall provide the counselor with a copy of course grades as soon as possible after the end of each term or semester.

(9) If an eligible individual does not maintain the standards of this section, the counselor shall:

- (a) Terminate services at the institution of higher education; and
- (b) Simultaneously notify the individual of the appeal procedure available under 782 KAR 1:040.

(10) Services terminated under subsection (9) of this section, may be reinstituted if the eligible individual:

- (a) Successfully appeals the counselor's decision, in accordance with 782 KAR 1:040; or
- (b) Subsequently meets the standard under which services were terminated.

Section 4. On-the-job-training. On-the-job-training provided in private or public employment other than within the department shall be subject to the following conditions:

- (1) The eligible individual shall receive at least minimum wage;
- (2) The employer shall provide to the eligible individual the same benefits and privileges that accrue to another employee.

(3) Prior to training, a written agreement shall be:

(a) Completed by the counselor, describing the goals and objectives of the training, including:

- 1. The length of training;
- 2. The skills taught;
- 3. Wages earned; and

4. An understanding that the eligible individual shall be hired permanently after successful completion of the training program.

(b) Signed by the:

- 1. Department; and
- 2. Employer.

(4) The eligible individual shall strive to make satisfactory progress in the training. The employer shall provide training reports to the department documenting the satisfactory or unsatisfactory progress of the eligible individual.

(5) The agreement for on-the-job training may be terminated by the department, the employer, or the eligible individual if the conditions of this section are not met.

Section 5. Work Experience and Work Adjustment. A program of work experience in private or public employment other than within the department shall be provided according to the following conditions:

(1) The individual shall not be sponsored for a period exceeding 520 total hours of work experience.

(2) A written agreement shall be completed by the counselor and signed by the department and employer or provider of services to designate:

- (a) The length of the work experience;
- (b) The number of hours to be worked each week;
- (c) The payment that the individual shall receive; and

(d) Any payment to the provider by the department.

(3) The employer or provider shall monitor the performance of the individual in work experience and make periodic reports to the counselor; and

(4) The work experience contract may be terminated by the department at anytime if it is determined that the work experience is not beneficial to the individual.

Section 6. Physical and Mental Restoration. (1) An applicant or eligible individual shall be free to make their own choice as to a specialist. The chosen specialist shall:

(a) Be qualified and licensed in accordance with:

1. State law; and
2. Administrative regulations;

(b) Skilled in a field appropriate to the applicant or eligible individual; and

(c) Agree to provide service in compliance with the law.

(2) Restoration services shall not be provided outside the Commonwealth of Kentucky, unless:

(a) The service is provided in a nearby out-of-state area routinely used for the convenience of the department;

(b) The out-of-state service shall be cost saving;

(c) The service is not provided in state; or

(d) The provision of an in-state service would delay service to an eligible individual at extreme medical risk.

Section 7. Maintenance. (1) Maintenance shall not be provided unless necessary to support and derive the full benefit of other services being provided.

(2) Maintenance shall:

(a) Begin after other services have begun; and

(b) Cease thirty (30) days after the eligible individual has achieved suitable employment.

(3) The department shall not pay more for an eligible individual's room and board at an institution of higher education than the highest rate at an in-state public institution.

(4) The cost of lodging and meals provided in support of services other than at an institution of higher education shall not exceed the per diem rate established for a state employee in Section 6 of 200 KAR 2:006.

(5) An eligible individual shall clearly designate a maintenance expense. The department shall not provide [provided] for maintenance identified as personal expenses or miscellaneous expenses.

Section 8. Transportation. Transportation for an eligible individual shall be paid in accordance with the following:

(1) Transportation by a public common carrier shall be in the most economical means available.

(2) Private transportation by private vehicle shall be at the mileage rate established for state employees by the Kentucky Finance and Administration Cabinet.

(3) Lodging and meals necessary during travel shall not exceed the per diem rates established for state employees by the Kentucky Finance and Administration Cabinet.

(4) The total cost of transportation allowed for commuting between home and campus for an eligible individual who attends an institution of higher education shall not exceed the rate of on-campus residence and board at the institution.

(5) Transportation for an eligible individual who resides on campus at an institution of higher education shall be limited annually to six (6) round trips between the eligible individual's home and the campus.

(6) Transportation may include relocation and moving expenses if necessary for an eligible individual to achieve placement in employment.

Section 9. Interpreter Services. Interpreter services shall be provided:

(1) If sign language is a necessary means of communication for the individual; and

(2) In conjunction with other services.

Section 10. Reader Services. Reader services shall be provided for a blind individual if:

(1) Recordings of printed materials are not readily available through the volunteer recording services of the department; and

(2) In conjunction with other services.

Section 11. Assistive Technology. (1) Assistive technology having the capacity to improve low vision shall be provided by an individual licensed to:

(a) Make an individual prescription; and

(b) Perform an individual fitting.

(2) Assistive technology may be provided if there is evidence that the eligible individual has the ability and capacity to successfully use assistive technology.

(3) Unusual or expensive assistive technology may be provided to an individual if use of a traditional aid or device is not feasible.

(4) An eligible individual shall return assistive technology to the department if it becomes unnecessary for the purpose for which it was provided.

(5) Assistive technology shall be:

(a) Provided in a new or like new condition; and

(b) Repaired or replaced by the department if, during the course of the written rehabilitation program, it becomes:

1. Defective;

2. Worn out; or

3. Obsolete.

(6) Unless involved in a postemployment service, it shall be the responsibility of the eligible individual to repair or replace defective, worn out, or obsolete assistive technology after rehabilitation.

Section 12. Self-employment. The department may participate in a self-employment program for a client if:

(1) The eligible individual and proposed self-employment enterprise undergo a feasibility evaluation;

(2) The eligible individual:

(a) Obtains the required:

1. License;

2. Permit;

3. Certificate; or

4. Lease; and

(b) Operates the enterprise in conformity with federal, state, and local statutes and regulations.

(3) The department has the option to review the proposed record-keeping system:

(a) Prior to establishment of the enterprise; and

(b) Periodically for up to five (5) years; and

(4) The department's financial participation in the enterprise does not exceed \$5,000. Exceptions may be made at the discretion of the director of client services, with sufficient documentation supporting the vocational goal of the eligible individual. [If it appears that the department will recover its cost of participation from another source, this amount may be exceeded.]

Section 13. Tools and Equipment. The department shall recover tools, equipment, and supplies provided for employment if their use by the eligible individual ceases.

Section 14. Recordings of Printed Materials. Cassette recording of textbooks and other vocational materials shall be made available through the department's volunteer recording program.

Section 15. Comparable Benefits. (1) If an eligible individual is provided training services at an institution of higher education, he shall annually apply for comparable benefits available through the financial aid office of the institution.

(2) The department shall maintain a cooperative agreement for improved coordination of comparable benefits for an eligible individual enrolled in an institution of higher education with the:

(a) Kentucky Association of Student Financial Aid Administrators; and

(b) Kentucky Higher Education Assistance Authority.

(3) Grant assistance, including a gift, endowment, or scholarship provided for a client enrolled in an institution of higher education, shall be considered a comparable benefit.

VOLUME 25, NUMBER 1 – JULY 1, 1998

(4) The following forms of financial assistance shall not be considered a comparable benefit for an eligible individual enrolled at an institution of higher education:

- (a) A guaranteed student loan;
- (b) A national direct or student loan;
- (c) A work study payment;
- (d) Other aid termed as self-help;

(e) An unrestricted monetary award from a civic, professional, or social organization.

(5) The department shall:

(a) Determine the need and cost of service for an eligible individual from:

1. Federal law; and
2. State law and administrative regulations.

(b) Not be bound by a determination of need and cost of service made by a financial aid office of an institution of higher education.

(6)(a) Comparable benefits awarded for purposes of higher education shall be applied to the services designated by the granting authority.

(b) If there is not a clear designation, the award shall be prorated by percentage to pay in part for the expense of:

1. Tuition and fees;
2. Books and supplies;
3. Room and board;
4. Personal expenses; and
5. Transportation.

(c) The percentage used for distribution shall be the amount of the award divided by the total expenses listed in paragraph (b) of this subsection.

Section 16. Participation of Individual in the Costs of Services. (1) The financial need of an individual with a disability shall not be considered by the department in the provision of services.

(2) An individual determined to be eligible for services shall be asked to voluntarily participate to help pay the costs of the individualized written rehabilitation program.

(3) Services shall not be denied to an individual who:

- (a) does not have available resources; or
- (b) Refuses to participate.

Section 17. Emergency Denial of Services. The department may immediately suspend or terminate services provided to an individual if during the course of those services the conduct of the individual poses a threat to personal safety or the safety of others.

Section 18. Order of Selection. (1) If the commissioner determines that the agency lacks available funds for all eligible individuals who apply for services, then the department shall follow an order of selection to give service priority according to a ranking of categories of eligible individuals based on the severity of disability as follows:

(a) Priority Category One shall include an eligible individual whose:

1. Impairment seriously limits four (4) or more functional capacities in terms of an employment outcome; and
2. Rehabilitation requires three (3) or more services.

(b) Priority Category Two shall include an eligible individual whose:

1. Impairment seriously limits three (3) or more functional capacities in terms of an employment outcome; and
2. Rehabilitation requires three (3) or more services.

(c) Priority Category Three shall include an eligible individual whose:

1. Impairment seriously limits two (2) or more functional capacities in terms of an employment outcome; and
2. Rehabilitation requires two (2) or more services.

(d) Priority Category Four shall include an eligible individual whose:

1. Impairment seriously limits one (1) or more functional capacities in terms of an employment outcome; and
2. Rehabilitation requires two (2) or more services.

(e) Priority Category Five: All other eligible individuals.

(2) Priority for services shall be given to an eligible individual with a more serious impairment.

(3) The order of selection shall be implemented on a statewide basis.

(4) An eligible individual who is a public safety officer, as defined in Section 7(12) of 20 USC 701, shall receive priority for services with each priority category.

(5) The department shall conduct an assessment to determine an individual's:

- (a) Eligibility for vocational rehabilitation services; and
- (b) Priority under the order of selections.

(6) The order of selection shall not apply to the following:

(a) The acceptance of a:

1. Referral; and
2. Applicant.

(b) The provision of assessment services to determine an individual's:

1. Eligibility for vocational rehabilitation services; and
2. Priority under the order of selection.

(c) An eligible individual who is in the process of receiving services at the effective date of the order of selection.

(7) An eligible individual shall be immediately reclassified into a higher priority category if their level of impairment increases and is documented.

(8) In the order of selection, an eligible individual in a closed priority category shall be placed on a waiting list until the priority category is reopened.

DENISE PLACIDO, Commissioner

SUE SIMON, Legal Counsel

APPROVED BY AGENCY: June 11, 1998

FILED WITH LRC: June 12, 1998 at 1 p.m.

PUBLIC HEARING: A public hearing on this regulation has been scheduled for July 21, 1998 at 10 a.m. Eastern Time at the Charles W. McDowell Center, 8412 Westport Road, Louisville, Kentucky 40242. However, this hearing will be canceled unless interested persons notify the following office in writing by July 14, 1998, of their desire to appear and testify at the hearing: Jeanne Pherson, Department for the Blind, Charles W. McDowell Center, 8412 Westport Road, Louisville, Kentucky 40242, (502) 327-6010 or (800) 346-2115, (502) 327-9991 (FAX).

The Department for the Blind does not discriminate on the basis of race, color, national origin, sex, disability, age, religion or marital status in training, activities or employment practices in accordance with Title VI of the Civil Rights Act of 1973, Title VII of the Civil Rights Act of 1964, and the Americans With Disabilities Act of 1990. The meeting facility is accessible to individuals with disabilities. The department will provide upon request, reasonable accommodations, including auxiliary aids and services necessary to afford individuals with a disability an equal opportunity to participate in all services, programs, and activities. If an interpreter or other auxiliary aid or service is needed, contact Jeanne Pherson at the address above.

REGULATORY IMPACT ANALYSIS

Contact Person: Jeanne Pherson

(1) Type and number of entities affected: All applicants for vocational rehabilitation services from the Department for the Blind.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographic area in which the administrative regulation will be implemented, to the extent available from the public comments received: None

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: None

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition for the):

1. First year following implementation: None
2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: There may be direct or indirect savings of funds due to changes in the assessment requirements.

1. First year: Minimal savings.

VOLUME 25, NUMBER 1 – JULY 1, 1998

2. Continuing costs or savings: Minimal savings.

3. Additional factors increasing or decreasing costs: Minimal savings.

(b) Reporting and paperwork requirements: There should be no additional reporting or paperwork requirements.

(4) Assessment of anticipated effect on state and local revenues: None

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The department uses state and federal funds with a match ratio of 78.7 federal to 21.3 state dollars.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: None

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were considered. Counsel has advised that the material is restrictive and is designated by KRS Chapter 13A as regulatory in nature.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: None

(b) State whether a detrimental effect on environmental and public health would result if not implemented: Not applicable.

(c) If detrimental effect would result, explain detrimental effect: None

(9) Identify any stature, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: None

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable.

(10) Any additional information or comments:

(11) TIERING: Is tiering applied? No. Federal statutes and regulations require uniformity in rules and regulations dealing with applicants or clients for vocational rehabilitation services.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate, 34 CFR 361.

2. State compliance standards. This administrative regulation makes changes to conform with federal Rehabilitation Services Administration's interpretation of the Rehabilitation Act Amendments of 1992.

3. Minimum or uniform standards contained in federal mandate. State vocational rehabilitation agencies are required to adopt policies and procedures necessary to conform with the federal guidelines imposed in the Rehabilitation Act of 1973, as amended.

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 or imposition of the stricter standards, or additional or different responsibilities or requirements.

WORKFORCE DEVELOPMENT CABINET Department for the Blind (Amendment)

782 KAR 1:040. Appeal procedures.

RELATES TO: KRS 163.450 to 163.470, 29 USC 701, 34 CFR Part 361

STATUTORY AUTHORITY: KRS 163.470(5)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 163.470(6) requires the Department for the Blind to implement policies and procedures for carrying out programs of services for persons of the Commonwealth who are blind or visually impaired. Under its State Plan for Vocational Rehabilitation authorized under Title I of the Rehabilitation Act of 1973, the department is required to establish procedures so that an applicant for or client of vocational rehabilitation

services who is dissatisfied with determinations made by staff of the department concerning the furnishing or denial of services may request a timely review of those determinations.

Section 1. Impartial Hearing Officer. To conduct a hearing under this administrative regulation, an impartial hearing officer shall:

(1) Be trained with respect to the performance of official duties;

(2) Have knowledge of:

(a) The delivery of vocational rehabilitation services;

(b) Federal and state laws; and

(c) Administrative regulations governing the provision of vocational rehabilitation services;

(3) Not:

(a) Be an employee of a public agency other than an:

1. Administrative law judge;

2. Hearing examiner; or

3. Employee of an institution of higher education;

(b) Be a member of the Department for the Blind Advisory Council;

(c) Have been involved in a previous decision regarding the vocational rehabilitation of an applicant or eligible individual;

(d) Have a personal or financial interest that would conflict with the objectivity of the individual.

Section 2. Right of Appeal and Information. (1) An applicant or eligible individual shall have the right to appeal an action to the director of client services concerning the:

(a) Furnishing of benefits; or

(b) Denial of vocational rehabilitation services.

(2) An applicant or eligible individual shall:

(a) Be informed of the:

1. Entitlements available under this administrative regulation;

2. Right to appeal, including representation by counsel or advocate; and

3. Names and addresses of department individuals with whom an appeal shall be filed.

(b) Request an appeal:

1. In writing;

2. By telephone; or

3. On tape.

(3) The director of client services or a designee shall convene a hearing within forty-five (45) days from the date [receipt] of the request. The hearing shall be conducted pursuant to:

(a) KRS Chapter 13B; and

(b) This administrative regulation.

(4) Pending a final determination of a hearing or other final resolution, the department shall not suspend, reduce, or terminate a service provided under the individualized written rehabilitation program unless:

(a) It has evidence that the service was obtained by an applicant or eligible individual through:

1. Misrepresentation;

2. Fraud;

3. Collusion; or

4. Criminal conduct; or

(b) This action is requested by an:

1. Applicant;

2. Client; or

3. Authorized representative of an applicant or client.

Section 3. Client Assistance Program. The department shall advise an applicant or eligible individual of:

(1) The existence of the Client Assistance Program, created by KRS 151B.225;

(2) The services provided by the program; and

(3) How to contact a program representative.

Section 4. Appeal Time and Hearing Procedures. (1) Within sixty (60) days of becoming aware, through the exercise of due diligence, of agency action or inaction, an applicant or eligible individual may appeal by contacting the director of client services, pursuant to Section 2(1) of this administrative regulation.

(2) An applicant or eligible individual shall, at the time of requesting an appeal hearing:

- (a) Identify accommodations required; and
- (b) Submit an issue statement for the hearing.
- (3) The department shall randomly select a hearing officer from a pool of approved and trained hearing officers.

Section 5. Conduct of the Hearing. (1) The rules of civil procedure shall not apply to a hearing conducted under the provisions of this administrative regulation.

- (2) Order of proof.
 - (a) The department shall:
 - 1. Present its case first;
 - 2. Examine witnesses; and
 - 3. Submit documentation, subject to cross examination.
 - (b) The applicant or eligible individual shall:
 - 1. Present its case second;
 - 2. Examine witnesses; and
 - 3. Submit documentation, subject to cross examination.
- (3) A party shall provide three (3) copies of a document that is to be introduced into evidence.

Section 6. Findings and Decision. (1) The hearing officer shall complete and submit to both parties and the Commissioner of the Department for the Blind the written recommended order within thirty (30) days of the completion of the hearing unless both parties agree to a time extension.

(2) If the Commissioner of the Department of the Blind decides to review the recommended order of the hearing officer the commissioner shall:

- (a) Notify the applicant or eligible individual within twenty (20) days of the mailing of the hearing officers order;
- (b) Provide the applicant or eligible individual the opportunity to submit additional evidence or information relevant to the final decision;
- (c) Not overturn or modify a decision unless it is concluded, based on clear and convincing evidence, that the decision is erroneous because it violates the:
 - 1. State rehabilitation act;
 - 2. Federal vocational rehabilitation regulations; or
 - 3. State administrative regulations or policies that are consistent with federal requirements.

(3) Within thirty (30) days of providing notice of intent to review the hearing officer's recommendation, the Commissioner of the Department for the Blind shall:

- (a) Make a final decision; and
- (b) Provide a full written report of the decision to the applicant or eligible individual, including:
 - 1. Findings; and
 - 2. Statutory, regulatory, or policy grounds for the decision.
- (4) If the Commissioner for the Department of the Blind fails to provide notice of his intent to review the recommendation within twenty (20) days, the recommended order of the hearing officer shall become a final decision.

(5) The commissioner may not delegate responsibility to make any final decision to any other officer or employee.

DENISE PLACIDO, Commissioner

SUE SIMON, Legal Counsel

APPROVED BY AGENCY: June 11, 1998

FILED WITH LRC: June 12, 1998 at 1 p.m.

PUBLIC HEARING: A public hearing on this regulation has been scheduled for July 21, 1998 at 10 a.m. Eastern Time at the Charles W. McDowell Center, 8412 Westport Road, Louisville, Kentucky 40242. However, this hearing will be canceled unless interested persons notify the following office in writing by July 14, 1998, of their desire to appear and testify at the hearing: Jeanne Pherson, Department for the Blind, Charles W. McDowell Center, 8412 Westport Road, Louisville, Kentucky 40242, (502) 327-6010 or (800) 346-2115, (502) 327-9991 (FAX).

The Department for the Blind does not discriminate on the basis of race, color, national origin, sex, disability, age, religion or marital status in training, activities or employment practices in accordance with Title VI of the Civil Rights Act of 1973, Title VII of the Civil Rights Act of 1964, and the Americans With Disabilities Act of 1990. The meeting facility is accessible to individuals with disabilities. The

department will provide upon request, reasonable accommodations, including auxiliary aids and services necessary to afford individuals with a disability an equal opportunity to participate in all services, programs, and activities. If an interpreter or other auxiliary aid or service is needed, contact Jeanne Pherson at the address above.

REGULATORY IMPACT ANALYSIS

Contact Person: Jeanne Pherson

(1) Type and number of entities affected: All applicants for vocational rehabilitation services from the Department for the Blind.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographic area in which the administrative regulation will be implemented, to the extent available from the public comments received: None

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: None

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition for the):

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Will be contingent upon number of appeals received but these reporting and paperwork requirements currently exist.

(4) Assessment of anticipated effect on state and local revenues: There should be no additional impact on state and local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Funds under the federal Rehabilitation Act of 1973, as amended, will be used for implementation and enforcement.

(6) Economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: None

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were considered. Amendment is being promulgated to conform to the federal Rehabilitation Services Administration's interpretation of the Rehabilitation Act Amendments of 1992.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: None

(b) State whether a detrimental effect on environmental and public health would result if not implemented: No detrimental effect on those issues will ensue.

(c) If detrimental effect would result, explain detrimental effect: None

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no statute, regulation or policy which is in conflict, overlaps, or duplicates this regulation which enumerates settlement procedures to be conducted for applicants and individuals eligible for vocational rehabilitation services from the department as prescribed by the Rehabilitation Act Amendments of 1992.

(a) Necessity of proposed regulation if in conflict: None

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(10) Any additional information or comments: This administrative regulation is being amended to comply with the standards established in the 1992 Amendments to the Rehabilitation Act of 1973.

(11) TIERING: Is tiering applied? (Explain why tiering was or was not) No. The federal law requires that all applicants and eligible individuals for vocational rehabilitation services be afforded an op-

VOLUME 25, NUMBER 1 – JULY 1, 1998

portunity for settlement and appeal. This administrative regulation identifies the procedures for those administrative settlements.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate.
34 CFR 361.

2. State compliance standards. This administrative regulation establishes procedures for dispute resolutions pursuant to the federal mandate and KRS Chapter 13B.

3. Minimum or uniform standards contained in federal mandate. State agencies are required to adopt policies and procedures necessary to assure applicants and eligible individuals an administrative avenue for resolving disputes.

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 or imposition of the stricter standards, or additional or different responsibilities or requirements.

NEW ADMINISTRATIVE REGULATIONS RECEIVED THROUGH NOON, JUNE 15, 1998

FINANCE AND ADMINISTRATION CABINET
Office of the Secretary
(New Administrative Regulation)

200 KAR 7:011. Repeal of 200 KAR 7:010.

RELATES TO: KRS Chapters 45A and 56

STATUTORY AUTHORITY: KRS 45A.035, 45A.045, 56.463

NECESSITY, FUNCTION, AND CONFORMITY: 200 KAR 7:010 allows contractors holding contracts with the state, administered by the Division of Engineering, Finance and Administration Cabinet, to substitute securities for the retainage withheld from each periodic payment made to such contractor and retained by the Commonwealth pursuant to the terms of their contracts. The Commonwealth invests the money for the contractor who is entitled to receive all interest income accruing on the securities. Because of the time and expense required by the Division of Engineering to comply with this administrative regulation, with no measurable benefit to the Commonwealth, 200 KAR 7:010 shall be repealed.

Section 1. 200 KAR 7:010, Substitution of securities for retainage, is hereby repealed.

JOHN MCCARTY, Secretary

ANGELA C. ROBINSON, Attorney

APPROVED BY AGENCY: June 10, 1998

FILED WITH LRC: June 15, 1998 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on July 24, 1998, at 9 a.m. in Room 158, Capitol Annex, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by July 17, 1998, 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. 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. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Angela C. Robinson, Office of Legal and Legislative Services, Finance and Administration Cabinet, Room 374, Capitol Annex, Frankfort, Kentucky 40601, phone: (502)564-6660, FAX: (502)564-9875.

REGULATORY IMPACT ANALYSIS

Contact Person: Angela C. Robinson

(1) Type and number of entities affected: Private construction contractors having contracts with the Finance and Administration Cabinet, Department for Facilities Management will be affected.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received. No direct or indirect costs or savings on the cost of living and employment in the geographical area in which the administrative regulation will be implemented are anticipated. No public comments have yet been received and no public hearing has yet taken place regarding this proposed regulation.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received. No direct or indirect costs or savings on the cost of doing business in the geographical area in which the administrative regulation will be implemented are anticipated. No public comments have yet been received and no public hearing has yet taken place regarding this proposed regulation.

(c) Compliance, reporting and paperwork requirements of those affected, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: No compliance, reporting or paperwork requirements will result.

2. Second and subsequent years: Same as for first year.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: Approximately \$33,000.00.

2. Continuing costs or savings: Approximately \$33,000.00 annually.

3. Additional factors increasing or decreasing costs: Frees up staff for other tasks.

(b) Reporting and paperwork requirements: None

(4) Assessment of anticipated effect on state and local revenues: No effect on state and local revenues is anticipated.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: None required.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: No public comments have yet been received and no public hearing has yet taken place regarding this proposed regulation. However, no economic impact is expected.

(b) Kentucky: No public comments have yet been received and no public hearing has yet taken place regarding this proposed regulation. However, no economic impact is expected.

(7) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were assessed.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: No effects on public health and environmental welfare are expected in the geographical area in which the regulation will be implemented or in Kentucky.

(b) State whether a detrimental effect on environment and public health would result if not implemented: No detrimental effect on the environment and public health would result if the regulation was not implemented.

(c) If detrimental effect would result, explain detrimental effect: Does not apply.

(9) Identify any statute, rule, administrative regulation or government policy which may be in conflict, overlapping, or duplication: To the best of the knowledge of the Office of the Secretary, there are no statutes, rules, administrative regulations or government policies which are in conflict, overlap, or duplicate the proposed administrative regulation.

(a) Necessity of proposed regulation if in conflict: Does not apply.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Does not apply.

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? Tiering was not applied. This administrative regulation repeals 200 KAR 7:010 which will apply equally to all affected.

MURRAY STATE UNIVERSITY
(New Administrative Regulation)

772 KAR 1:010. Acquisition and disbursement of funds, accounting system - records and annual report.

RELATES TO: KRS 164A.560, 164A.565

STATUTORY AUTHORITY: KRS 164A.560

NECESSITY, FUNCTION, AND CONFORMITY: The governing boards of the public institutions of higher education may elect to perform the financial management functions of KRS 164A.555 to

164A.630 by issuing administrative regulations to do so. This administrative regulation implements the provisions of KRS 164A.560 and 164A.565 at Murray State University.

Section 1. The Murray State University Board of Regents elects to perform the financial management functions set forth in KRS 164A.560, Section (2), related to the receipt, deposit, collection, retention, investment, disbursement, and accounting of all funds; and KRS 164A.565 related to the installation of an accrual basis accounting system, other records and annual reports.

Section 2. The Murray State University Board of Regents elects to comply with KRS 164A.560, Section (2)(b) to limit disbursements to the amounts and for the purposes for which the state appropriations have been made, or other monies have been received through the enacting resolution of the institution's annual operating budget.

Section 3. The Murray State University Board of Regents shall use an accrual basis accounting system and fund structure that conforms with generally accepted accounting principles and procedures established for colleges and universities by the National Association of College and University Business Officers and the American Institute of Certified Public Accountants, and shall act to ensure further compliance with Sections (2), (3), (6), (7), and (8) of KRS 164A.565.

SID EASLEY, Chair

JOHN P. RAUL, Office of General Counsel

APPROVED BY AGENCY: June 12, 1998

FILED WITH LRC: June 15, 1998 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held Friday, July 24, 1998, at 10 a.m., CDT, at the Third Floor Conference Room, Sparks Hall, Murray State University, Murray, Kentucky 42071. Individuals interested in being heard at this hearing shall notify this agency in writing by Friday, July 17, 1998, five (5) working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. 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. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person listed below: Mr. Thomas Denton, Vice President for Administrative Services, Murray State University, P. O. Box 9, Murray, Kentucky 42071. Phone: (502) 762-3774; Facsimile: (502) 762-3497.

REGULATORY IMPACT ANALYSIS

Contact person: Mr. Thomas W. Denton

(1) Type and number of entities affected: Since Murray State University internally implemented this regulation in 1983 and given that the purpose of this regulation is only to codify an elective provision of KRS Chapter 164A, there are no new entities which will be affected. The original entities affected were Murray State University, State Treasury, State Division of Accounts, State Computer Services, and vendors and others doing business with the University.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented to the extent available from the public comments received: No direct or indirect costs or savings on the cost of living and employment in the geographical area in which the administrative regulation will be implemented are anticipated. No public comments have yet been received, and no public hearing has yet taken place regarding the proposed administrative regulation.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No direct or indirect costs or savings on the cost of doing business in the geographical area in

which the administrative regulation will be implemented are anticipated. No public comments have yet been received, and no public hearing has yet taken place regarding this proposed administrative regulation.

(c) Compliance, reporting, and paper work requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: At the state level, the number of checks issued, the processing and filing of documents, the computer time involved in processing transactions, and the quantity of computer reports produced were reduced. The internal implementation of this regulation resulted in fewer layers of the decision-making process and resulted in a significant decrease in the paperwork processed in Frankfort with increased accountability and expertise at the university level.

2. Second and subsequent years: Same as for first year.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The first year of internal implementation of this regulation resulted in more processing of transactions with less paper work. The internal implementation of this regulation resulted in fewer layers of the decision-making process. The actual codification of the regulations will not affect costs or savings.

2. Continuing costs or savings: Same as above.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paper work requirements: The internal authorization of this regulation resulted in a significant decrease in the paper work processed in Frankfort with increased accountability and expertise at the university level.

(4) Assessment of anticipated effect on state and local revenues: None

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: General fund appropriations.

(6) To the extent available from the public comments received, the economic impact, including effects on economic activities arising from administrative regulation on:

(a) Geographical area in which administrative regulation will be implemented: No public comments have yet been received, and no public hearing has yet taken place regarding this proposed administrative regulation. However, no economic impact is expected.

(b) Kentucky: No public comments have yet been received, and no public hearing has yet taken place regarding this proposed administrative regulation. However, no economic impact is expected apart from continued efficiency in the areas covered by the proposed regulation.

(7) Assessment of alternative methods; reasons why alternatives were rejected: This is the only alternative permitted by KRS Chapter 164A.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: No effects on public health and environmental welfare are expected in the geographical area in which the proposed administrative regulation will be implemented or in Kentucky.

(b) State whether a detrimental effect on environment and public health would result if not implemented: No detrimental effect on the environment and public health would result if the proposed administrative regulation is not implemented.

(c) If detrimental effect would result, explain detrimental effect: Does not apply.

(9) Identify any statute, administrative regulation, or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: Does not apply.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Does not apply.

(10) Any additional information or comments: The purpose of this regulation is to codify an elective provision of KRS Chapter 164A which the University has previously internally implemented. This internal regulation implemented statutory delegation of certain financial management functions from the Executive Branch (Finance and Administration Cabinet) to the University for the purpose of increasing efficiency and accountability.

(11) TIERING: Is tiering applied? No. Tiering was not applied because the University is required by statute to implement the provisions addressed by the proposed regulation in the event it elects to perform pursuant to KRS 164A.560 et seq.

**MURRAY STATE UNIVERSITY
(New Administrative Regulation)**

772 KAR 1:020. Delegation of financial management responsibility.

RELATES TO: KRS 164A.560, 164A.565, 164A.575, 164A.580, 164A.585, 164A.590, 164A.595, 164A.600, 164A.605, 164A.620

STATUTORY AUTHORITY: KRS 164A.560

NECESSITY, FUNCTION, AND CONFORMITY: The governing boards of the public institutions of higher education may elect to perform the financial management functions of KRS 164A.555 to 164A.630 by issuing administrative regulations to do so. This administrative regulation implements the provision of KRS 164A.560 at Murray State University.

Section 1. The Murray State University Board of Regents, under the provision of KRS 164A.560, elects to delegate responsibility for the financial management provisions of KRS 164A.560, 164A.565, 164A.575, 164A.580, 164A.585, 164A.590, 164A.595, 164A.600, and 164A.620 to the president of the university. Further, the Board of Regents delegates to the president responsibility for submitting to the State Property and Buildings Commission information and requests for approval of any bond project approved by the Board of Regents. The Board of Regents authorizes the president to delegate any portion of this authority to the Vice President for Administrative Services or to other appropriate university officials.

SID EASLEY, Chair

JOHN P. RAUL, Office of General Counsel

APPROVED BY AGENCY: June 12, 1998

FILED WITH LRC: June 15, 1998 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held Friday, July 24, 1998, at 10 a.m., CDT, at the Third Floor Conference Room, Sparks Hall, Murray State University, Murray, Kentucky 42071. Individuals interested in being heard at this hearing shall notify this agency in writing by Friday, July 17, 1998, five (5) working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. 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. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person listed below: Mr. Thomas Denton, Vice President for Administrative Services, Murray State University, P. O. Box 9, Murray, Kentucky 42071. Phone: (502) 762-3774; Facsimile: (502) 762-3497.

REGULATORY IMPACT ANALYSIS

Contact person: Mr. Thomas W. Denton

(1) Type and number of entities affected: Murray State University internally implemented this regulation in 1983 in connection with its assuming the responsibilities of KRS 164A.560 et seq. except those relating to capital construction. The proposed administrative regulation will formalize that earlier enactment and will expand the delegation of authority to encompass matters relating to the capital construction. The only entity affected by the internal delegation of authority is the University.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented to the extent available from the public comments received: No direct or indirect

costs or savings on the cost of living and employment in the geographical area in which the administrative regulation will be implemented are anticipated. No public comments have yet been received, and no public hearing has yet taken place regarding the proposed administrative regulation.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No direct or indirect costs or savings on the cost of doing business in the geographical area in which the administrative regulation will be implemented are anticipated. No public comments have yet been received, and no public hearing has yet taken place regarding this proposed administrative regulation.

(c) Compliance, reporting, and paper work requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: None
2. Second and subsequent years: Same as for first year.
- (3) Effects on the promulgating administrative body:
 - (a) Direct and indirect costs or savings:
 1. First year: None
 2. Continuing costs or savings: Same as above.
 3. Additional factors increasing or decreasing costs: None

(b) Reporting and paper work requirements: Those to whom authority is delegated may be called upon to report to the Board of Regents or other appropriate officials.

(4) Assessment of anticipated effect on state and local revenues: None

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: General fund appropriations.

(6) To the extent available from the public comments received, the economic impact, including effects on economic activities arising from administrative regulation on:

(a) Geographical area in which administrative regulation will be implemented: No public comments have yet been received, and no public hearing has yet taken place regarding this proposed administrative regulation. However, no economic impact is expected.

(b) Kentucky: No public comments have yet been received, and no public hearing has yet taken place regarding this proposed administrative regulation. However, no economic impact is expected.

(7) Assessment of alternative methods; reasons why alternatives were rejected: This is the only alternative permitted by KRS Chapter 164A.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: No effects on public health and environmental welfare are expected in the geographical area in which the proposed administrative regulation will be implemented or in Kentucky.

(b) State whether a detrimental effect on environment and public health would result if not implemented: No detrimental effect on the environment and public health would result if the proposed administrative regulation is not implemented.

(c) If detrimental effect would result, explain detrimental effect: Does not apply.

(9) Identify any statute, administrative regulation, or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: Does not apply.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Does not apply.

(10) Any additional information or comments: The purpose of this regulation is to codify an elective provision of KRS Chapter 164A which the University has previously internally implemented and to expand the delegation of authority to include capital construction matters. This internal regulation implemented new statutory delegation of certain financial management functions from the Executive Branch (Finance and Administration Cabinet) to the University for the purpose of increasing efficiency and accountability.

(11) TIERING: Is tiering applied? No. Tiering was not applied because the University is statutorily directed as to how to implement the subject matter of the proposed regulation.

**MURRAY STATE UNIVERSITY
(New Administrative Regulation)**

772 KAR 1:030. Annual audit.

RELATES TO: KRS 164A.570

STATUTORY AUTHORITY: KRS 164A.560

NECESSITY, FUNCTION, AND CONFORMITY: The governing boards of the public institutions of higher education may elect to perform the financial management functions of KRS 164A.555 to 164A.630 by issuing administrative regulations to do so. This administrative regulation implements the provisions of KRS 164A.570 at Murray State University.

Section 1. The Murray State University Board of Regents elects to engage a qualified firm of certified public accountants for the purpose of submitting an independent opinion concerning the internal accounting controls and compliance with the provisions of KRS 164A.560, 164A.565, 164A.575, and 164A.620. The engagement of the qualified firm, scope of the audit, and report of findings shall be in accordance with the provisions of KRS 164A.570.

SID EASLEY, Chair

JOHN P. RAUL, Office of General Counsel

APPROVED BY AGENCY: June 12, 1998

FILED WITH LRC: June 15, 1998 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held Friday, July 24, 1998, at 10 a.m., CDT, at the Third Floor Conference Room, Sparks Hall, Murray State University, Murray, Kentucky 42071. Individuals interested in being heard at this hearing shall notify this agency in writing by Friday, July 17, 1998, five (5) working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. 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. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person listed below: Mr. Thomas Denton, Vice President for Administrative Services, Murray State University, P. O. Box 9, Murray, Kentucky 42071. Phone: (502) 762-3774; Facsimile: (502) 762-3497.

REGULATORY IMPACT ANALYSIS

Contact person: Mr. Thomas W. Denton

(1) Type and number of entities affected: Since Murray State University internally implemented this regulation in 1983 and given that the purpose of this regulation is only to codify an elective provision of KRS Chapter 164A, there are no new entities which will be affected. The original entities affected were Murray State University, the Finance and Administration Cabinet, and the Auditor of Public Accounts.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented to the extent available from the public comments received: No direct or indirect costs or savings on the cost of living and employment in the geographical area in which the administrative regulation will be implemented are anticipated. No public comments have yet been received, and no public hearing has yet taken place regarding the proposed administrative regulation.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No direct or indirect costs or savings on the cost of doing business in the geographical area in which the administrative regulation will be implemented are anticipated. No public comments have yet been received, and no public hearing has yet taken place regarding this proposed administrative regulation.

(c) Compliance, reporting, and paper work requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: Filing copies of the audit reports.

2. Second and subsequent years: Same as for first year.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The internal implementation of this regulation resulted in no significant increase in the cost of the audit for compliance testing. The actual codification of the regulation will not affect costs or savings.

2. Continuing costs or savings: Same as above.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paper work requirements: Filing copies of the audit reports.

(4) Assessment of anticipated effect on state and local revenues: None

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: General fund appropriations.

(6) To the extent available from the public comments received, the economic impact, including effects on economic activities arising from administrative regulation on:

(a) Geographical area in which administrative regulation will be implemented: No public comments have yet been received, and no public hearing has yet taken place regarding this proposed administrative regulation. However, no economic impact is expected.

(b) Kentucky: No public comments have yet been received, and no public hearing has yet taken place regarding this proposed administrative regulation. However, no economic impact is expected.

(7) Assessment of alternative methods; reasons why alternatives were rejected: This is the only alternative permitted by KRS Chapter 164A.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: No effects on public health and environmental welfare are expected in the geographical area in which the proposed administrative regulation will be implemented or in Kentucky.

(b) State whether a detrimental effect on environment and public health would result if not implemented: No detrimental effect on the environment and public health would result if the proposed administrative regulation is not implemented.

(c) If detrimental effect would result, explain detrimental effect: Does not apply.

(9) Identify any statute, administrative regulation, or government policy which may be in conflict, overlapping, or duplication: None.

(a) Necessity of proposed regulation if in conflict: Does not apply.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Does not apply.

(10) Any additional information or comments: The purpose of this regulation is to codify the elective provisions of KRS Chapter 164A which the University has previously internally implemented. This internal regulation implemented new statutory delegation of certain financial management functions from the Executive Branch (Finance and Administration Cabinet) to the University for the purpose of increasing efficiency and accountability.

(11) TIERING: Is tiering applied? No. Tiering was not applied because the University is required to implement provisions addressed by the proposed regulation in the event it elects to perform pursuant to KRS 164A.560 et seq.

**MURRAY STATE UNIVERSITY
(New Administrative Regulation)**

772 KAR 1:040. Purchase - inventories - sales of surplus property - capital construction procedures.

RELATES TO: KRS 164A.575, 164A.580, 164A.585, 164A.590, 164A.595, 164A.600

STATUTORY AUTHORITY: KRS 164A.560

NECESSITY, FUNCTION, AND CONFORMITY: The governing boards of the public institutions of higher education may elect to perform the financial management functions of KRS 164A.555 to 164A.630 by issuing administrative regulations to do so. This administrative regulation implements the provisions of KRS 164A.575, 164A.580, 164A.585, 164A.590, 164A.595, and 164A.600 at Murray State University.

Section 1. The Murray State University Board of Regents, under the provisions of KRS 164A.560, elects to purchase and manage interests in real property, contractual services, rentals of all types, supplies, materials, equipment, printing, and services in accordance with KRS 164A.575 and elects to manage and administer capital construction projects in accordance with KRS 164A.580, 164A.585, 164A.590, 164A.595, and 164A.600.

SID EASLEY, Chair

JOHN P. RAUL, Office of General Counsel

APPROVED BY AGENCY: June 12, 1998

FILED WITH LRC: June 15, 1998 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held Friday, July 24, 1998, at 10 a.m., CDT, at the Third Floor Conference Room, Sparks Hall, Murray State University, Murray, Kentucky 42071. Individuals interested in being heard at this hearing shall notify this agency in writing by Friday, July 17, 1998, five (5) working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. 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. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person listed below: Mr. Thomas Denton, Vice President for Administrative Services, Murray State University, P. O. Box 9, Murray, Kentucky 42071. Phone: (502) 762-3774; Facsimile: (502) 762-3497.

REGULATORY IMPACT ANALYSIS

Contact person: Mr. Thomas W. Denton

(1) Type and number of entities affected: Since Murray State University internally elected to act pursuant to KRS 164A.575 in 1983, and since one purpose of the proposed regulation is to codify that prior election, there are no new entities which will be affected with respect to KRS 164A.575. The original entity affected other than the university was the Finance and Administration Cabinet, Division of Purchases. With the implementation of KRS 164A.580, 164A.585, 164A.590, 164A.595, and 164A.600, entities affected are the University and its Facilities Management, Procurement, and Accounting and Financial Services Departments, and the Finance and Administration Cabinet, its Department for Facilities Management, and its Divisions of Engineering, Contracting and Administration, Purchases, and Real Property.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented to the extent available from the public comments received: No direct or indirect costs or savings on the cost of living and employment in the geographical area in which the administrative regulation will be implemented are anticipated. No public comments have yet been received, and no public hearing has yet taken place regarding the proposed administrative regulation.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No direct or indirect costs or savings on the cost of doing business in the geographical area in which the administrative regulation will be implemented are anticipated. No public comments have yet been received, and no public hearing has yet taken place regarding this proposed administrative regulation.

(c) Compliance, reporting, and paper work requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: No additional compliance, reporting, and paper work requirements are anticipated in connection with the codification of the prior election to act pursuant to KRS 164A.575. The Finance and Administration Cabinet may incur moderate administrative costs associated with the university's election to implement KRS 164A.560 et seq. relating to capital construction. Such costs may be incurred as a result of the development of the transition plan with the university for current capital construction projects. Administrative costs for the Finance and Administration Cabinet for this process should be moderate and only result in direct labor costs for time actually contributed to this particular task. The Department for Facilities Management of the Finance and Administration Cabinet should incur considerable savings in its Division of Engineering and Division of Contracting and Administration. These work areas should see a substantial reduction in their workloads relating to Murray State University projects. The Division of Engineering will no longer be responsible for project management and accounting related duties. This will affect their office staff as well as field representatives that visit the various project sites on a routine basis. Site visits will no longer be required by state personnel. Although the Division of Contracting and Administration is compensated for project bid expenditures such as plan and specification reproduction costs and postage/mailling costs, it should incur substantial savings as a result of not having personnel assigned to the bidding or procurement of capital construction project goods or services.

2. Second and subsequent years: With respect to the capital construction provision of the proposed regulation, the Finance and Administration Cabinet should not have any costs beyond the first year costs identified above. The projected savings identified should be perpetual. Further, the implementation of the proposed regulation should not increase costs other than previously indicated. The university must continue to follow the requirements of the Model Procurement Code.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The codification of the regulation regarding KRS 164A.575 will result in no additional costs or savings over those experienced since Murray State University assumed those statutory responsibilities in 1983. With respect to the implementation of KRS 164A.580, 164A.585, 164A.590, 164A.595, and 164A.600, it is assumed that five (5) additional full-time employees will be added to the university's Facilities Management Department. These proposed new employees will specifically work in the area of capital construction. It is estimated that the salaries and benefits for the five (5) new employees will cost \$190,000 per year. In addition to this amount, it is estimated that furniture and fixtures, equipment, and vehicles will cost approximately \$40,000 initially. Additional legal counsel may be necessitated because of construction related matters, at a cost of \$45,000 annually. The proposed employees will be housed within existing office space. Therefore, the first year direct and indirect costs are estimated to be \$275,000. Funds will be provided by the university's general operating fund. It is estimated that the proposed new staff will be in the position to develop certain project contract documents (plans and specifications) "in-house" and to address any disputes, thus resulting in considerable savings to the University. A percentage of project funds allocated to a capital construction project for certain design consultants could be saved if such service were accomplished by the university staff.

2. Continuing costs or savings: The proposed continuing annual costs would be the \$235,000 for salaries and benefits for the six (6) proposed new employees as identified above. Projected savings would be the same as those identified above.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paper work requirements: Although the University will continue to keep the Commonwealth well informed of status of construction projects, the implementation of this regulation should result in fewer layers of reporting. From time to time, there may be a need for project reporting to the Capital Projects and Bond Oversight Committee or other agencies. The University will assume

responsibility for the various documents and papers surrounding a project.

(4) Assessment of anticipated effect on state and local revenues: None

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: General fund appropriations. Capital projects may be financed through approved bonds.

(6) To the extent available from the public comments received, the economic impact, including effects on economic activities arising from administrative regulation on:

(a) Geographical area in which administrative regulation will be implemented: No public comments have yet been received, and no public hearing has yet taken place regarding this proposed administrative regulation. However, no economic impact is expected although increased efficiency in bidding, letting contracts, and construction is anticipated.

(b) Kentucky: No public comments have yet been received, and no public hearing has yet taken place regarding this proposed administrative regulation. However, no economic impact is expected apart from the benefits noted above as well as the continued efficiencies in the areas already internally implemented.

(7) Assessment of alternative methods; reasons why alternatives were rejected: This is the only alternative permitted by KRS Chapter 164A.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: No effects on public health and environmental welfare are expected in the geographical area in which the proposed administrative regulation will be implemented or in Kentucky.

(b) State whether a detrimental effect on environment and public health would result if not implemented: No detrimental effect on the environment and public health would result if the proposed administrative regulation is not implemented.

(c) If detrimental effect would result, explain detrimental effect: Does not apply.

(9) Identify any statute, administrative regulation, or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: Does not apply.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Does not apply.

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? No. Tiering was not applied because the university is directed, by statute, in the manner by which the subject matter of the proposed regulation is to be implemented.

MURRAY STATE UNIVERSITY (New Administrative Regulation)

772 KAR 1:050. Issuance of bonds.

RELATES TO: KRS 164A.605

STATUTORY AUTHORITY: KRS 164A.560

NECESSITY, FUNCTION, AND CONFORMITY: The governing boards of the public institutions of higher education may elect to perform the financial management functions of KRS 164A.555 to 164A.630 by issuing administrative regulations to do so. This administrative regulation implements the provision of KRS 164A.605 at Murray State University.

Section 1. The Murray State University Board of Regents, under the provisions of KRS 164A.560, elects the authority to issue bonds, subject to the conditions as set forth in KRS 164A.605.

SID EASLEY, Chair

JOHN P. RAUL, Office of General Counsel

APPROVED BY AGENCY: June 12, 1998

FILED WITH LRC: June 15, 1998 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held Friday, July 24, 1998, at 10 a.m., CDT, at

the Third Floor Conference Room, Sparks Hall, Murray State University, Murray, Kentucky 42071. Individuals interested in being heard at this hearing shall notify this agency in writing by Friday, July 17, 1998, five (5) working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. 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. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person listed below: Mr. Thomas Denton, Vice President for Administrative Services, Murray State University, P. O. Box 9, Murray, Kentucky 42071. Phone: (502) 762-3774; Facsimile: (502) 762-3497.

REGULATORY IMPACT ANALYSIS

Contact person: Mr. Thomas W. Denton

(1) Type and number of entities affected: Since Murray State University internally implemented this regulation in 1983 and given that the purpose of this regulation is only to codify an elective provision of KRS Chapter 164A, there are no new entities which will be affected. The original entities affected were Murray State University, the State Property and Building Commission, and the Finance and Administration Cabinet.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented to the extent available from the public comments received: No direct or indirect costs or savings on the cost of living and employment in the geographical area in which the administrative regulation will be implemented are anticipated. No public comments have yet been received, and no public hearing has yet taken place regarding the proposed administrative regulation.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No direct or indirect costs or savings on the cost of doing business in the geographical area in which the administrative regulation will be implemented are anticipated. No public comments have yet been received, and no public hearing has yet taken place regarding this proposed administrative regulation.

(c) Compliance, reporting, and paper work requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: Approval of a project by the State Property and Building Commission is required in addition to any other approvals needed in connection with a bond issue.

2. Second and subsequent years: Same as for first year.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: Same as above.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paper work requirements: Approval of a project by the State Property and Building Commission is required in addition to any other approvals needed in connection with a bond issue.

(4) Assessment of anticipated effect on state and local revenues: None

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: General fund appropriations.

(6) To the extent available from the public comments received, the economic impact, including effects on economic activities arising from administrative regulation on:

(a) Geographical area in which administrative regulation will be implemented: No public comments have yet been received, and no public hearing has yet taken place regarding this proposed administrative regulation. However, no economic impact is expected.

(b) Kentucky: No public comments have yet been received, and no public hearing has yet taken place regarding this proposed administrative regulation. However, no economic impact is expected.

(7) Assessment of alternative methods; reasons why alternatives were rejected: This is the only alternative permitted by KRS Chapter 164A.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: No effects on public health and environmental welfare are expected in the geographical area in which the proposed administrative regulation will be implemented or in Kentucky.

(b) State whether a detrimental effect on environment and public health would result if not implemented: No detrimental effect on the environment and public health would result if the proposed administrative regulation is not implemented.

(c) If detrimental effect would result, explain detrimental effect: Does not apply.

(9) Identify any statute, administrative regulation, or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: Does not apply.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Does not apply.

(10) Any additional information or comments: The purpose of this regulation is to codify the elective provisions of KRS Chapter 164A which the University has previously internally authorized and is currently following. This internally authorized regulation implemented new statutory delegation of certain financial management functions from the Executive Branch (Finance and Administration Cabinet) to the University for the purpose of increasing efficiency and accountability.

(11) TIERING: Is tiering applied? No. Tiering was not applied because the University is directed, by statute, in the manner by which the subject matter of the proposed regulation is to be implemented.

**MURRAY STATE UNIVERSITY
(New Administrative Regulation)**

772 KAR 1:060. Fund for excellence.

RELATES TO: KRS 164.410, 164A.620

STATUTORY AUTHORITY: KRS 164A.560

NECESSITY, FUNCTION, AND CONFORMITY: The governing boards of the public institutions of higher education may elect to perform the financial management functions of KRS 164A.555 to 164A.630 by issuing administrative regulations to do so. This administrative regulation implements the provision of KRS 164A.620 at Murray State University.

Section 1. The Murray State University Board of Regents, under the provisions of KRS 164A.560, elects and authorizes the establishment of a fund for excellence under the conditions and for the purpose as set forth in KRS 164A.620.

SID EASLEY, Chair

JOHN P. RAUL, Office of General Counsel

APPROVED BY AGENCY: June 12, 1998

FILED WITH LRC: June 15, 1998 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held Friday, July 24, 1998, at 10 a.m., CDT, at the Third Floor Conference Room, Sparks Hall, Murray State University, Murray, Kentucky 42071. Individuals interested in being heard at this hearing shall notify this agency in writing by Friday, July 17, 1998, five (5) working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. 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. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person listed below: Mr. Thomas Denton, Vice President for Administrative Services, Murray State University, P. O. Box 9, Murray, Kentucky 42071. Phone: (502) 762-3774; Facsimile: (502) 762-3497.

REGULATORY IMPACT ANALYSIS

Contact person: Mr. Thomas W. Denton

(1) Type and number of entities affected: Since Murray State University internally implemented this regulation in 1983 and given that the purpose of this regulation is only to codify an elective provision of KRS Chapter 164A, there are no new entities which will be affected. The original entity affected was the University.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented to the extent available from the public comments received: No direct or indirect costs or savings on the cost of living and employment in the geographical area in which the administrative regulation will be implemented are anticipated. No public comments have yet been received, and no public hearing has yet taken place regarding the proposed administrative regulation.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No direct or indirect costs or savings on the cost of doing business in the geographical area in which the administrative regulation will be implemented are anticipated. No public comments have yet been received, and no public hearing has yet taken place regarding this proposed administrative regulation.

(c) Compliance, reporting, and paper work requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: None
2. Second and subsequent years: Same as for first year.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None
2. Continuing costs or savings: Same as above.
3. Additional factors increasing or decreasing costs: None

(b) Reporting and paper work requirements: None

(4) Assessment of anticipated effect on state and local revenues: None

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: General fund appropriations. In addition, gifts, grants, special appropriations by the General Assembly, and proceeds from the sale of property may be deposited into the fund.

(6) To the extent available from the public comments received, the economic impact, including effects on economic activities arising from administrative regulation on:

(a) Geographical area in which administrative regulation will be implemented: No public comments have yet been received, and no public hearing has yet taken place regarding this proposed administrative regulation. However, no economic impact is expected.

(b) Kentucky: No public comments have yet been received, and no public hearing has yet taken place regarding this proposed administrative regulation. However, no economic impact is expected.

(7) Assessment of alternative methods; reasons why alternatives were rejected: This is the only alternative permitted by KRS Chapter 164A.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: No effects on public health and environmental welfare are expected in the geographical area in which the proposed administrative regulation will be implemented or in Kentucky.

(b) State whether a detrimental effect on environment and public health would result if not implemented: No detrimental effect on the

environment and public health would result if the proposed administrative regulation is not implemented.

(c) If detrimental effect would result, explain detrimental effect: Does not apply.

(9) Identify any statute, administrative regulation, or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: Does not apply.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Does not apply.

(10) Any additional information or comments: The purpose of this regulation is to codify the elective provisions of KRS Chapter 164A which the University has previously internally authorized and is currently following. This internally authorized regulation implemented new statutory delegation of certain financial management functions from the Executive Branch (Finance and Administration Cabinet) to the University for the purpose of increasing efficiency and accountability.

(11) TIERING: Is tiering applied? No. Tiering was not applied because the University is directed, by statute, in the manner by which the subject matter of the proposed regulation is to be implemented.

**MURRAY STATE UNIVERSITY
(New Administrative Regulation)**

772 KAR 1:070. Affiliated corporations.

RELATES TO: KRS 164A.610

STATUTORY AUTHORITY: KRS 164A.560

NECESSITY, FUNCTION, AND CONFORMITY: The governing boards of the public institutions of higher education may elect to perform the financial management functions of KRS 164A.555 to 164A.630 by issuing administrative regulations to do so. This administrative regulation implements the provisions of KRS 164A.610 at Murray State University.

Section 1. The Murray State University Board of Regents, under the provisions of KRS 164A.560, elects the authority to organize and operate one (1) or more affiliated corporations in accordance with KRS 164A.610.

SID EASLEY, Chair

JOHN P. RAUL, Office of General Counsel

APPROVED BY AGENCY: June 12, 1998

FILED WITH LRC: June 15, 1998 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held Friday, July 24, 1998, at 10 a.m., CDT, at the Third Floor Conference Room, Sparks Hall, Murray State University, Murray, Kentucky 42071. Individuals interested in being heard at this hearing shall notify this agency in writing by Friday, July 17, 1998, five (5) working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. 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. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person listed below: Mr. Thomas Denton, Vice President for Administrative Services, Murray State University, P. O. Box 9, Murray, Kentucky 42071. Phone: (502) 762-3774; Facsimile: (502) 762-3497.

REGULATORY IMPACT ANALYSIS

Contact person: Mr. Thomas W. Denton

(1) Type and number of entities affected: Since Murray State University internally implemented this regulation in 1983 and given that the purpose of this regulation is only to codify an elective provi-

sion of KRS Chapter 164A, there are no new entities which will be affected. The original entity affected was Murray State University.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented to the extent available from the public comments received: No direct or indirect costs or savings on the cost of living and employment in the geographical area in which the administrative regulation will be implemented are anticipated. No public comments have yet been received, and no public hearing has yet taken place regarding the proposed administrative regulation.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No direct or indirect costs or savings on the cost of doing business in the geographical area in which the administrative regulation will be implemented are anticipated. No public comments have yet been received, and no public hearing has yet taken place regarding this proposed administrative regulation.

(c) Compliance, reporting, and paper work requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: None

2. Second and subsequent years: Same as for first year.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: Same as above.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paper work requirements: Organizational paper work may be required.

(4) Assessment of anticipated effect on state and local revenues: None

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: General fund appropriations.

(6) To the extent available from the public comments received, the economic impact, including effects on economic activities arising from administrative regulation on:

(a) Geographical area in which administrative regulation will be implemented: No public comments have yet been received, and no public hearing has yet taken place regarding this proposed administrative regulation. However, no economic impact is expected.

(b) Kentucky: No public comments have yet been received, and no public hearing has yet taken place regarding this proposed administrative regulation. However, no economic impact is expected.

(7) Assessment of alternative methods; reasons why alternatives were rejected: This is the only alternative permitted by KRS Chapter 164A.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: No effects on public health and environmental welfare are expected in the geographical area in which the proposed administrative regulation will be implemented or in Kentucky.

(b) State whether a detrimental effect on environment and public health would result if not implemented: No detrimental effect on the environment and public health would result if the proposed administrative regulation is not implemented.

(c) If detrimental effect would result, explain detrimental effect: Does not apply.

(9) Identify any statute, administrative regulation, or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: Does not apply.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Does not apply.

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? No. Tiering was not applied because the University is directed, by statute, in the manner by which the subject matter of the proposed regulation is to be implemented.

**CABINET FOR WORKFORCE DEVELOPMENT
Kentucky Assistive Technology Loan Corporation
(New Administrative Regulation)**

789 KAR 1:010. General eligibility criteria for assistive technology loans.

RELATES TO: KRS 151B.190

STATUTORY AUTHORITY: KRS 151B.185, 151B.195

NECESSITY, FUNCTION, AND CONFORMITY: KRS 151B.465 requires the Board of Directors of the Kentucky Assistive Technology Loan Corporation to promulgate administrative regulations to establish and administer a program for providing low-interest loans to qualified borrowers through qualified lenders for the acquisition of assistive technology. This administrative regulation prescribes when, and under what conditions, assistive technology loans shall be provided, in order to distribute limited funds equitably over the population of qualified borrowers.

Section 1. Definitions. (1) "Debt-to-income ratio" means the ratio of all monthly installment payments to total monthly income. Monthly installment payments include, but are not limited to, rent, mortgage, credit card payments, and unsecured loans. Monthly installment payments shall not include maintenance costs such as food and utilities.

(2) "Nonprofit organization" means an incorporated entity under the provisions of KRS Chapter 273 that is in good standing with the Kentucky Office of the Secretary of State.

Section 2. Loan Purposes. The board shall consider loans for the acquisition of assistive technology equipment if the equipment is essential to compensate for the limitations caused by the disability. The cost of assistive technology services such as assessments, training, etc., may be included in the loan amount if the services are directly related to the assistive technology device(s) being purchased. Extended service agreements may be included in the amount of the loan. An additional loan may be considered to finance repairs and maintenance.

Section 3. Eligibility. (1) To be eligible for a low interest loan from the board, an applicant shall:

- (a) Be an individual with a disability as defined in KRS 151B.450 or a parent or legal guardian of an individual with a disability. The disability shall not be of a temporary, transient or acute nature;
- (b) Have a debt-to-income ratio no greater than that stipulated in agreements between the board and qualified lender(s);
- (c) Be of legal age and have the legal authority to enter into contracts; and
- (d) Be a resident of Kentucky for at least six (6) continuous months prior to the date of application.

(2) To be eligible for a low interest loan from the board, a nonprofit organization shall:

- (a) Provide assistive technology to individuals with disabilities who are residents of Kentucky;
- (b) Affirm that, and explain how, the adaptive equipment will be used for current or potential employees, clients, customers, or other associated individuals with disabilities.

Section 4. Initial Verification of Disability. Applicants for initial loans shall verify disability by furnishing one (1) or more of the following:

(1) A statement from a licensed medical professional indicating how the disability substantially affects one (1) or more major life activities as defined in KRS 151B.450;

(2) Proof of enrollment in one of the following:

- (a) State vocational rehabilitation program;
- (b) Social Security Disability Insurance (SSDI);
- (c) Medicare enrollment based on disability;
- (d) Medicaid enrollment based on disability;
- (e) Veterans Administration enrollment based on current disability;

ity;

(f) Educational services enrollment under an individualized family service plan, individualized education plan, or Section 504 of the Rehabilitation Act;

(g) Children with special health care needs;

(h) Mental health or mental retardation services;

(i) Other comparable verification of disability;

(3) Demonstrate an obvious physical disability.

Section 5. Required Application Information. The following material shall be required as part of the loan request:

(1) Legal name, current address and telephone number, and Social Security number (if a nonprofit organization, the employer identification number will substitute for the Social Security number);

(2) Nature of relationship to a person with a disability (if applicant does not have a disability);

(3) Nature of disability and how it affects one (1) or more major life activities as defined in KRS 151B.450;

(4) Description of the assistive technology being requested and how it will compensate for the limitations of a disability and improve the quality of life of an individual with a disability;

(5) Amount of money requested including any costs for extended warranties, insurance, necessary training, etc. An itemized price quote from the potential seller shall be attached;

(6) Total current monthly income with sources;

(7) Total monthly installment payments, including, but not limited to, rent, mortgage, credit card payments, and unsecured loans;

(8) A signed statement that all submitted information is truthful and accurate;

(9) A signed waiver allowing the release of information about the individual between the board and the qualified lender(s);

(10) In the case of a non-profit organization, proof of such status as defined in Section 1(2) of this administrative regulation.

Section 6. Loan Application Procedure. (1) Each request for a loan shall attach all information and documentation when filing with the board. A loan request shall be submitted to the Department of Vocational Rehabilitation, 209 St. Clair Street, Frankfort, Kentucky 40601, (502) 564-4440.

(2) After review of the request, the board of directors may require the applicant to obtain an evaluation from an assistive technology professional, medical professional or other professional if more information is needed for the board to make a decision.

(3) An application shall include a quote for the total price of the equipment and/or service for which the loan is being requested. The board may require the applicant to obtain additional price quotes if it considers the submitted quote to be unusually high, unless the applicant can demonstrate that the equipment is available only from a single source.

(4) If the board preapproves a loan, the applicant shall be referred to a qualified lender that has previously entered into an agreement with the board that specifies the terms and conditions under which the qualified lender may make a loan. The qualified lender may conduct a credit check of the applicant. The qualified lender may reject the loan application on the basis of an unfavorable credit report or other financial criteria agreed upon by the qualified lender and the board.

(5) The board shall notify the applicant of its decision in writing, or in appropriate alternative format as requested, within fifteen (15) days after the decision is made. If an application is denied, the reasons for the denial shall be specified based on eligibility requirements and loan requirements.

(6) An applicant who is aggrieved by a decision of the board may petition the board for reconsideration, in writing or in appropriate alternative format, and provide additional documentation that addresses the stated reasons for denial. The board shall consider any new information and shall provide the applicant with an opportunity to be heard. The board shall inform the applicant of its decision at the meeting or in writing or in appropriate alternative format within seven (7) days if the applicant is not present. The decision of the board is final.

VOLUME 25, NUMBER 1 – JULY 1, 1998

Section 7. General Loan Requirements. (1) The minimum amount of a loan shall be \$500 and the maximum amount of a loan shall be \$25,000.

(2) The period of a loan shall be from a minimum of one year to a maximum of ten years or the estimated life of a device, whichever is less. Loan periods shall be congruent with the agreement between the board and the qualified lender(s).

(3) The assistive technology device shall be titled in the name of the qualified borrower with the board or its agent as lien holder. If the board is supplying secondary funding, the board or its agent shall become the holder of a secondary encumbrance.

(4) The board or the qualified lender(s) may require a qualified borrower to insure the equipment for the remaining value of the loan.

(5) The qualified borrower shall be responsible for all repairs and maintenance of the equipment. An additional loan may be considered to finance repairs and maintenance.

(6) The board may require a qualified borrower to participate in a specified consumer credit counseling program.

(7) An individual may secure more than one (1) loan if the total amount of all loans do not exceed \$25,000.

(8) The board or the qualified lender(s) may require a down payment.

Section 8: Priority Consideration. (1) Applicants shall be considered in the following order of preference:

(a) An individual with a disability or parent or legal guardian of a person with a disability who has no current loans through the board;

(b) An individual with a disability or parent or legal guardian of a person with a disability who has one (1) or more existing loans through the board;

(c) A nonprofit organization.

(2) Otherwise, applications shall be considered in the order in which they are received.

Section 9. Confidentiality. The application and all submitted information shall be held confidential. In addition, board members shall use identification numbers on all applications and, unless otherwise required, the name, Social Security number, address, telephone number, and electronic mail address of the applicant shall not be revealed. The board shall meet in closed session when discussing individual applications and shall refer to applications in open session only by the identification number. The secretary of the cabinet or a designee shall maintain access to all records relating to applications and loans.

ALAN FARBER, Chair
SUE SIMON, Legal Counsel

APPROVED BY AGENCY: June 12, 1998

FILED WITH LRC: June 15, 1998 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation has been scheduled for July 21, 1998 at 10 a.m. eastern time in the DVR Training Room, 209 St. Clair, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by July 14, 1998, five days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the 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. 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: George Parsons, Department of Vocational Rehabilitation, 209 St. Clair, Frankfort, Kentucky 40601, (800) 372-7172 (V/TDD), (502) 564-6745 (FAX).

The Department of Vocational Rehabilitation does not discriminate on the basis of race, color, national origin, sex, disability, age, religion or marital status in training, activities or employment practices in accordance with Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendment of 1972, Section 504 of the Reha-

ilitation Act of 1973, Title VII of the Civil Rights Act of 1964 and the Americans With Disabilities Act of 1990. The meeting facility is accessible to people with disabilities. The department will provide upon request, reasonable accommodations including auxiliary aids and services necessary to afford individuals with a disability an equal opportunity to participate in all services, programs, and activities. If an interpreter or other auxiliary aid or service is needed, contact George Parsons at the address above.

REGULATORY IMPACT ANALYSIS

Contact person: George Parsons

(1) Type and number of entities affected: Applicants in need of financial assistance for the purchase of assistive technology equipment and services.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographic area in which the administrative regulation will be implemented, to the extent available from the public comments received: None

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: None

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Reporting requirements and paperwork requirements are comparable to other loan application requirements. The board requires only one application with supporting documentation to determine if the individual is a qualified borrower.

(4) Assessment of anticipated effect on state and local revenues: None

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: General funds were appropriated to establish the board and to make initial loans.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: None

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were considered. Counsel has advised that the material is restrictive and is designated by KRS Chapter 13A as regulatory in nature. No alternative assistive technology loan fund is available.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: None

(b) State whether a detrimental effect on environment and public health would result if not implemented: Not applicable.

(c) If detrimental effect would result, explain detrimental effect: Not applicable

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: Not applicable.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable.

(10) Any additional information or comments: The administrative regulation is being promulgated to provide low interest loans to qualified borrowers as required by KRS 151B.455.

(11) TIERING: Is tiering applied? No. The material subject to regulation, low interest loans for assistive technology equipment and services, is unique to the Kentucky Assistive Technology Loan Corporation.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate.
None
2. State compliance standards. This administrative regulation details the standards for approving assistive technology loans to qualified borrowers.
3. Minimum or uniform standards contained in federal mandate.
There is no federal mandate.
4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? Not applicable.
5. Justification or imposition of the stricter standards, or additional or different responsibilities or requirements. Not applicable.

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE
Minutes of June 9, 1998

The June meeting of the Administrative Regulation Review Subcommittee was held on Tuesday, June 9, 1998 at 10 a.m. in Room 149 of the Capitol Annex. Representative John Arnold, Chairman, called the meeting to order, and the roll call was taken. The minutes of the May 11, 1998 meeting were approved.

Present were:

Members: Representative John Arnold, Chairman; James Bruce, Senator Joey Pendleton; Representatives James Bruce, Jimmy Lee, and Woody Allen.

LRC Staff: Greg Karambellas, Stephen Lynn, Donna Little, Susan Wunderlich, Angela Phillips, Donna Valencia, Biff Baker, Dan Risch.

Guests: Wilbur Frye, University of Kentucky - Division of Regulatory Services; Sue McDade, Dennis L. Taulbee, Council on Post-secondary Education; Susan Stopher, Board of Accountancy; Mark Brengelman, Gary Munsie, Board of Dentistry; Jeff Blair, Joe Helm, Real Estate Commission; Nathan Goldman, Board of Nursing; Roy Grimes, Department of Fish and Wildlife Resources; Mark Farrow, Department of Agriculture; Kenneth Hines, Mark Mangeot, Bruce Williams, Diana K. Maxwell, Diana Andrews, Allen Luttrell, Ronald Mills, Natural Resources and Environmental Protection Cabinet; Geraldine Glass, Karen Cronen, Tamela Biggs, Jack Damron, Brenda Priestley, Department of Corrections; Linda F. Frank, Keith Hardison, Parole Board; Ronda Tamme, Kevin Noland, Education, Arts, and Humanities Cabinet; George Parsons, Department of Vocational Rehabilitation; Larry L. Roberts, William L. Ralston, Gary L. Moberly, Kembra Taylor, Labor Cabinet; Carla H. Montgomery, Department of Workers' Claims; George Nichols III, Paula Woolums, Julie Geilear, Sharron S. Burton, David Howe, Herbert C. Pettersen, Department of Insurance; Colleen Keefe, Marion Lewis, Department of Financial Institutions; Rena E. Strevels, Kentucky Racing Commission; Chuck Cotton, Tom Barnes, Thomas Walker, Department for Housing, Buildings and Construction; Bonnie Hommrich, Paul Stratton, Michael Cheek, Joyce Lea, Janice Kline, Ruth Friedheim, Fran Sample, Cookie Whitehouse, Patricia Wilson, Cabinet for Families and Children; Eric Friedlander, Cabinet for Health Services; Rebeckan Freeman, J.K. Henshaw, Sam Crawford, Kentucky Farm Bureau Federation; Victor Fox; Bart Baldwin, Children's Alliance; Melinda Ryles, The Kentucky United Methodist Homes; Judith Bloor, Gordon S. Brown, The Home of the Innocents; Stephen Holourilt; Kathy Miles, Christian Church Homes; Bill Smithwick, Kentucky Baptist Homes for Children; Tom Fitzgerald, Kentucky Resources Council.

The Subcommittee determined that the following administrative regulations, as amended by the promulgating agency and the Subcommittee, complied with statutory requirements:

Council On Postsecondary Education: Public Educational Institutions

13 KAR 2:045. Determination of residency status for admission and tuition assessment purposes. Dennis Taulbee, General Counsel, and Sue McDade, Associate Director for Higher Education Statistics, represented the Council.

In response to a question by Chairman Arnold, Mr. Taulbee stated that, after the Council had held several student residency hearings pursuant to KRS Chapter 13B, the Council had amended this administrative regulation in response to changes needed.

This administrative regulation was amended as follows: Sections 1, 3, 5, 6, 8, 10, 12, and 17 were amended to comply with the: (1) format requirements of KRS 13A.220(4); and (2) drafting requirements of KRS 13A.222(4).

Board of Dentistry

201 KAR 8:400. Complaint procedure. Gary Munsie, Executive Director, and Mark Brengelman, Assistant Attorney General, represented the Board.

Mr. Brengelman stated that: (1) this administrative regulation: (a) guided the Board in receiving complaints regarding the practice of

dentistry; and (b) established a committee structure for the review of complaints reviewing a complaint; (2) after an initial investigation, the committee would make a recommendation to the Board on how to proceed; and (3) because the complaint process had not been established by statute, this administrative regulation required: procedures to ensure that: (a) a thorough investigation was conducted; and (b) due process and constitutional requirements were met.

In response to questions by Representative Lee, Mr. Brengelman stated that: (1) this administrative regulation required the Board to notify the complainant and respondent of the final disposition of a complaint; (2) historically, notification had been made in writing to both parties; (3) the notification stated: (a) that the Board had received the complaint; and (b) the action taken by the Board; and (4) this administrative regulation: (a) did not require the Board to notify the parties in writing; (b) required that the party be notified; and (c) would be clearer if it detailed the method by which the party was notified.

Mr. Munsie stated that: (1) the Board usually notified the respondent in writing; and (2) it would be not be a problem to include the method of notification in this administrative regulation.

Representative Lee moved that this administrative regulation be amended to provide that the respondent shall be notified in writing;.

In response to a question by Subcommittee staff, Mr. Brengelman stated that the written notice requirement should be inserted in Section 5(1), after the word "notify".

Senator Pendleton moved to further amend this administrative regulation to require that the written notification be sent by certified mail.

Representative Lee stated that: (1) he thought that sending the notification by certified mail would make it very definite that the respondent had received the notification; (2) the Board might not agree to the amendment because of the additional expense to the Board; (3) the notice requirement would protect the Board by preventing a respondent from saying that he was not notified; and (4) requiring notification in writing by certified mail was appropriate since someone could possibly lose his license to practice dentistry.

Mr. Brengelman stated that: (1) the rights of the licensee were protected because he would receive notice under KRS Chapter 13B if the matter went to a formal administrative hearing; (2) this administrative regulation addressed: (a) the original complainant; and (b) the disposition of the initial complaint; (3) approximately 130 complaints were made each year; and (4) the written, certified mail requirement would be more expensive because the Board would have to notify two parties.

In response, Representative Lee stated that he thought that the notice was important.

In response to a question by Subcommittee Staff, Mr. Brengelman stated that: (1) KRS Chapter 13B required specific notice in writing; (2) this administrative regulation was different from the administrative hearing requirements under KRS Chapter 13B; and (3) he was not aware of other statutes relating to notification by an agency.

In response to a question by Chairman Arnold, Mr. Munsie stated that the Board would comply with the requirement of providing written notification, by certified mail.

This administrative regulation was amended as follows: (1) the Subcommittee approved a motion by Senator Pendleton, seconded by Representative Lee, to amend Section 5(1) of this administrative regulation to require that the Board notify the complainant and respondent in writing by certified mail; and (2)(a) pursuant to KRS 13A.222(4)(a); Sections 1(3)(c) and 1(3)(d) were deleted, because they repeated language in Sections 3(2)(c) and 2(4); (b) Sections 2(2) and 3(2) were amended to comply with the formatting requirements of KRS 13A.220(4); and (c) Sections 1, 3, and 4 were amended to comply with the drafting requirements of KRS 13A.222(4).

Real Estate Commission

201 KAR 11:147. Procedure for license retention when salesman released by broker. Jeff Blair, General Counsel, and Joseph Helm, Executive Director, represented the Board.

In response to a question by Chairman Arnold, Subcommittee staff stated that the staff amendment suggested changing the terms responsible broker, sales person, and cancellation, to principal broker, sales associate, and suspension or revocation, because: (1) KRS 324.310(1) used those terms, and (2) KRS 13A.120(2)(i) prohibited the promulgation of an administrative regulation that modified or vitiated a statute.

This administrative regulation was amended as follows: (1) pursuant to KRS 13A.120(2)(i), the TITLE was amended to change the term "salesman" to "sales associate"; (2) the RELATES TO and STATUTORY AUTHORITY paragraphs were amended to correct statutory citations; (3) pursuant to KRS 13A.220(3)(f), the NECESSITY, FUNCTION, AND CONFORMITY paragraph was amended to clearly state the necessity for and function served by the administrative regulation; and (4) Section 1 was amended to: (a) pursuant to KRS 13A.120(2)(i), use the following terms that are established by statute: 1. "principal broker", rather than "responsible broker"; 2. "sales associate", rather than "salesperson"; and 3. "suspension or revocation", rather than "cancellation"; and (b) comply with the: 1. format requirements of KRS 13A.220(4); and 2. drafting requirements of KRS 13A.222(4).

201 KAR 11:175. Instructor approval procedures and guidelines. This administrative regulation was amended as follows: (1) the RELATES TO paragraph was amended to correct statutory citations; (2) the NECESSITY, FUNCTION, AND CONFORMITY paragraph was amended to clearly state the necessity for and function served by the administrative regulation, as required by KRS 13A.220(3)(f); (3) Section 1 was amended to clarify the requirements for application for certification as an instructor; (4) Sections 1, 2, and 3 were amended to comply with the: (a) format requirements of KRS 13A.220(4); and (b) drafting requirements of KRS 13A.222(4); and (5) a new Section 4 was created to incorporate by reference the required forms.

201 KAR 11:350. Seller's disclosure of conditions form. This administrative regulation was amended as follows: (1) the RELATES TO paragraph was amended to correct statutory citations; (2) the NECESSITY, FUNCTION, AND CONFORMITY paragraph was amended to clearly state the necessity for and function served by the administrative regulation, as required by KRS 13A.220(3)(f); and (3) Section 1 was amended to: (a) specify that a seller of residential real estate was required to complete and sign the established Seller Disclosure of Property Condition form, as required by KRS 324.360; and (b) comply with the: 1. format requirements of KRS 13A.220(4); and 2. drafting requirements of KRS 13A.222(4).

Board of Nursing

201 KAR 20:056. Advanced registered nurse practitioner registration, program requirements, recognition of a national certifying organization. Nathan Goldman, General Counsel, represented the Board. In response to questions by Chairman Arnold, Mr. Goldman stated that: (1) a national certification organization gave the national examination for certification as an advanced registered nurse practitioner; and (2) because all nursing examinations were administered nationally, an applicant was not required to take a state test.

This administrative regulation was amended as follows: (1) the RELATES TO and STATUTORY AUTHORITY paragraphs were amended to correct statutory citations; (2) the NECESSITY, FUNCTION, AND CONFORMITY paragraph was amended to clearly state the necessity for and function served by the administrative regulation, as required by KRS 13A.220(3)(f); (3) Section 1 was amended to clarify the requirements for an applicant for registration; (4) Sections 2 through 8 were amended to comply with the: (a) format requirements of KRS 13A.220(4); and (b) drafting requirements of KRS 13A.222(4); and (5) a new Section 12 was created to incorporate by reference the required material.

Tourism Cabinet: Department of Fish and Wildlife Resources: Hunting and Fishing

301 KAR 3:010. Public use of wildlife management areas. Roy Grimes, Wildlife Director, represented the Department.

In response to questions by Chairman Arnold, Mr. Grimes stated that: (1) there was some confusion regarding the effect of this administrative regulation; (2) as originally written, this administrative regulation addressed camping; (3) the Section addressing camping was deleted because the Department was not ready to address that issue; (4) camping on a wildlife management area would not change; (5) this administrative regulation permitted riding horses on a wildlife management area: (a) on trails; or (b) in designated areas; (6) if the Department had an erosion or severe resource problem in a particular area, it would not designate it as a riding area; (7) the Department did: (a) not plan to prohibit horses from wildlife management areas; and (b) planned to manage the use of horses on the wildlife management areas to prevent: 1. conflicts; and 2. resource problems; (8) there were trails and riding areas on several of the wildlife management areas; (9) this administrative regulation applied to existing trails and areas; (10) the Department did not plan to: (a) build any new trails; or (b) designate new riding areas; and (11) in the future, the Department would include local interests in the design of new trails or designation of riding areas.

This administrative regulation was amended as follows: (1) Sections 1 and 2 were amended to comply with the drafting requirements of KRS 13A.222(4); and (2) Section 5(2), which addressed operating off-road vehicles on a Wildlife Management Area, was deleted at the agency's request.

Natural Resources And Environmental Protection Cabinet: Department for Environmental Protection: Division for Air Quality: Asbestos

401 KAR 58:025. National emission standard for asbestos. Diana Andrews, Assistant Director of the Division, and Kenneth Hines, Branch Manager for Program Planning, represented the Department.

Ms. Andrews stated that this administrative regulation incorporated by reference the federal regulations relating to asbestos.

Section 1(1) of this administrative regulation was amended to: (1) delete "administration"; and (2) insert "administrator".

Department for Surface Mining Reclamation and Enforcement: Performance Standards for Surface Mining Activities

405 KAR 16:060. General hydrologic requirements. Allen Luttrell, Deputy Commissioner, and Ron Mills, Attorney, represented the Department. Tom FitzGerald, Director of Kentucky Resources Council, appeared before the Subcommittee to speak in opposition to the proposed amendment to this administrative regulation.

In response to a question by Chairman Arnold, Mr. Luttrell stated that: (1) 405 KAR 16:060 and 405 KAR 18:060: (a) were required by the 1992 Energy Policy Act; and (b) governed water replacement in: 1. surface mining; and 2. underground mining; and (2) the issue raised at the May 11, 1998, Subcommittee meeting regarding the issuance of a notice of noncompliance for affecting a water supply had been worked out with the Kentucky Coal Association.

In response to a question by Chairman Arnold, Mr. FitzGerald stated that: (1) he was not opposed to these administrative regulations because they were needed to address water replacement; (2) while an amendment to this administrative regulation was worked out between the State and coal industry, the people who represented the landowners had not been a part of that agreement; (3) he thought that the agreement regarding water replacement weakened this administrative regulation; (4) in addition to conforming to KRS Chapter 13A, administrative regulations were required to be consistent in substance and manner with federal law; (5) the Department was prohibited by statute from promulgating administrative regulations that were inconsistent with federal law; (6) the proposed amendment: (a) eliminated the requirement of issuing a notice of violation when the State made a determination of damage to a water supply; and (b) required that a notice of violation would not be issued unless there was a failure to promptly replace the water supply; (7) he believed that this amendment was inconsistent with federal law; (8) there was nothing more frustrating to a landowner than

to lose his only source of water; (9) he represented 73 families in the Camp Branch watershed of Letcher County who: (a) paid property taxes; (b) had built houses; and (c) had assumed they would have immediate replacement water if someone damaged their water supply; (10) in the past, it had been an extremely frustrating process to get prompt water replacement supplies for: (a) these families; and (b) hundreds of other landowners across the state; (11) an operator would have notice of an allegation of damage for weeks, and probably months, before a formal State determination was made; (12) he understood federal law required prompt replacement of a damaged water supply by the operator upon receipt of notice of the damage by the landowner, rather than upon notification by the state that the water supply had been damaged; and (13) he opposed the proposed amendment because he felt it weakened the protection offered by this administrative regulation.

Mr. Luttrell stated that: (1)(a) industry's position was that a non-compliance notice should not be issued unless there was a failure to provide emergency water; (b) the Department's position was that the notice of noncompliance should be issued upon notice that a water loss had occurred; and (c) the State and industry were at an impasse; (2) the Department asked for an interpretation of the water replacement requirements from the Office of Surface Mining, which had regulatory oversight of Kentucky's program; (3) the Office of Surface Mining told the Department that: (a) water loss was not a violation; and (b) failure to timely mitigate water loss was a violation; and (4) the Department removed the requirement of issuing a non-compliance notice upon notice of water loss from this administrative regulation.

In response to questions by Subcommittee members, Subcommittee staff stated that: (1) there were 2 sets of amendments to this administrative regulation; (2) pursuant to the Department's agreement with Bill Caylor, Kentucky Coal Association, one set would delete the sentence, in Section 8(1) and Section 12(1) of 405 KAR 18:060 that stated "If the Cabinet determines that a protected water supply has been contaminated, diminished, or interrupted by the mining operation, the Cabinet shall issue a notice of noncompliance to the permittee or operator, and order the replacement of the water supply"; (3) the other set of amendments were proposed by the Cabinet pursuant to Subcommittee staff recommendations; and (4) if it agreed with the proposals, the Subcommittee would approve both sets of amendments.

Mr. FitzGerald stated that: (1) he would liked to have had some involvement in the negotiations after the public comment period; and (2) it was frustrating: (a) to go through the public process of promulgation and publication of this administrative regulation; and (b) for the public to be excluded from this second level of process.

This administrative regulation was amended as follows: (1) pursuant to KRS 13A.220(3)(f), the NECESSITY, FUNCTION, AND CONFORMITY paragraph was amended to clearly state the necessity for and function served by the administrative regulation; (2) Section 8(1) was amended to delete a provision that required the Cabinet to issue a notice of noncompliance if a protected water supply was: (a) contaminated; (b) diminished; or (c) interrupted; and (3) Sections 1, 2, 4, and 8 were amended to comply with the drafting requirements of KRS 13A.222(4).

Performance Standards for Underground Mining Activities

405 KAR 18:060. General hydrologic requirements. Allen Luttrell, Deputy Commissioner, and Ron Mills, Attorney, represented the Department. Tom FitzGerald, Director of Kentucky Resources Council, appeared before the Subcommittee to speak in opposition to the proposed amendment to this administrative regulation. See, comments relating to the discussion of 405 KAR 16:060.

This administrative regulation was amended as follows: (1) the STATUTORY AUTHORITY paragraph was amended to correct statutory citations; (2) the NECESSITY, FUNCTION, AND CONFORMITY paragraph was amended to clearly state the necessity for and function served by the administrative regulation, as required by KRS 13A.220(3)(f); (3) Section 12(1) was amended to delete a provision that required the Cabinet to issue a notice of noncompliance if a protected water supply was: (a) contaminated; (b) diminished; or (c) interrupted; and (4) Sections 1, 2, 3, 4, 8, 11, and 12 were amended to comply with the drafting requirements of KRS 13A.222(4).

Justice Cabinet: Kentucky Parole Board

501 KAR 1:030&E. Determining parole eligibility. Keith Hardison, Assistant General Counsel, Jack Damron, and Tamela Biggs, Department of Corrections appeared before the Subcommittee. Subcommittee staff stated that this administrative regulation contained the agreement reached between the Subcommittee and the Board relating to parole.

This administrative regulation was amended as follows: (1) various sections of this administrative regulation were amended to: (a) delete language that repeated or summarized statutory language; and (b) comply with the drafting and format requirements of KRS Chapter 13A; and (2) language and sections relating to internal administration that are not required to be contained in an administrative regulation were deleted.

Division of Adult Institutions: Office of the Secretary

501 KAR 6:020&E. Corrections policies and procedures. Keith Hardison, Assistant General Counsel, Jack Damron, and Tamela Biggs, Department of Corrections appeared before the Subcommittee. Mr. Damron stated that: (1) with regard to inmate telephone calls: (a) the issue was in litigation in Louisville, DelaRue v. Commonwealth; (b) questions regarding this case should be referred to Cabinet outside counsel, Jim Cox, Reed and Whitecamp; and (c) related to the: 1. contract with telephone companies to manage institutions' long distance calls; and 2. objections over the cost of purchase of long-distance services; (2)(a) when inmates were disciplined, they have a right to appeal from the adjustment committee decision to wardens; (b) except for reformatory, wardens have 30 days to make a decision on the appeal; and (c) reformatory appeal decisions must be made within 20 days, because of the consent decree, Kendrick v. Bland; (3) the use against an inmate of his inmate's silence during a hearing is permitted: (a) because disciplinary hearings are not considered part of the criminal process; and (b) in Baxter v. Palmigiano, 425 U.S. 308 (1976), the U.S. Supreme Court: 1. permitted the use of an inmate's silence, since disciplinary proceedings in a state prison involved correctional process and important state interests other than a conviction for crime; and 2. refused to apply Griffin v. California, and related cases; and (4)(a) referrals for prosecution for felonies was required by statute; and (b) referral for prosecution for misdemeanors may be made, depending upon the kind of misdemeanor, because neither the county attorneys nor the Commonwealth Attorneys want to prosecute these when, for example, an inmate is serving a life sentence. In response to questions by Chairman Arnold and Representative Lee, Mr. Damron stated that: (a) the inmate would be punished by the institution; and (b) loss of good time was more effective than a concurrent sentence.

The Subcommittee approved the following amendments proposed by the Cabinet: (1) CPP 1.2 was amended to establish consistent terms; and (2) CPP 15.6 was amended to make it clear that an investigator cannot have witnessed an incident.

The Subcommittee approved a motion by Representative Bruce, seconded by Representative Lee, to amend the offenses and penalties policies for inmates contained in this administrative regulation to create two categories of offenses: (1) indecent exposure; and (2) use of unauthorized drugs or intoxicants.

501 KAR 6:080&E. Department of Corrections manuals.

Education, Arts And Humanities Cabinet: Board Of Education: Office of Chief State School Officer

701 KAR 5:110. Use of local monies to reduce unmet technology need. Kevin Noland, General Counsel, represented the Department.

Mr. Noland stated that: (1) the master plan for education technology was: (a) required by KRS 156.670(1); and (b) adopted by the Kentucky Board of Education about five years ago; (2) because more schools now had computers, this administrative regulation was amended to update the master plan to reflect the operations stage; and (3) a local school district would be provided more flexibility in using state-matched dollars on education technology at the local level to: (a) provide more teacher training on the use of computers; and (b) replace outdated computers.

In response to a question by Chairman Arnold, Mr. Noland stated: (1) this administrative regulation did not involve a tax in-

crease; and (2) local school districts: (a) used local match money from their existing general funds; and (b) had been using general fund money for several years as a local match.

This administrative regulation was amended as follows: the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1, 3, 4, and 5 were amended to comply with the: (1) format requirements of KRS 13A.220(4); and (2) drafting requirements of KRS 13A.222(4).

Office of Learning Programs Development: Education Professional Standards Board

704 KAR 20:082. Probationary certificate for teachers of children, birth to primary. Ronda Tamme, Director of Teacher Certification, represented the Board. In response to a question by Chairman Arnold, Ms. Tamme stated that this administrative regulation permitted individuals who were prepared to teach to move into a different teaching certificate area.

In response to a question by Representative Bruce, Ms. Tamme stated that, while the initiative was to have people who were trained to teach from birth to primary, the state was not enrolling students under the age of three years old.

In response to a question by Chairman Arnold, Ms. Tamme stated that this administrative regulation: (1) did not relate to day cares; and (2) addressed certification needs for public schools that have Head Start and preschool programs for three-year olds.

This administrative regulation was amended as follows: Sections 1, 2, 3, and 5 were amended to comply with the: (1) format requirements of KRS 13A.220(4); and (2) drafting requirements of KRS 13A.222(4).

704 KAR 20:670. Kentucky teaching certificates. Ms. Tamme stated that this administrative regulation allowed the time for individuals who were in a preparation program to be increased. This administrative regulation was amended as follows: (1) Sections 3 and 7 were amended to comply with the: (a) format requirements of KRS 13A.220(4); and (b) drafting requirements of KRS 13A.222(4); and (2) Section 7(2) was amended to delete citations to three administrative regulations.

Workforce Development Cabinet: Department Of Vocational Rehabilitation: Administration

781 KAR 1:020. General provisions for operation of the Department of Vocational Rehabilitation. George Parsons, Rehabilitation Program Administrator, represented the Department.

This administrative regulation was amended as follows: (1) Sections 1, 2, 5, 6, 7, 8, 9, 10, 11, 12, 13, and 14 were amended to comply with the drafting requirements of KRS 13A.222(4); and (2) Sections 1 and 11 were amended to comply with the formatting requirements of KRS 13A.220(4).

781 KAR 1:040. Rehabilitation technology services. George Parsons, Rehabilitation Program Administrator, represented the Department.

This administrative regulation was amended as follows: (1) Sections 2, 3, 4, 6, and 9 were amended to comply with the drafting requirements of KRS 13A.222(4); and (2) Section 6(1) was amended to comply with the formatting requirements of KRS 13A.220(4).

Department of Financial Institutions: Securities

808 KAR 10:010. Forms for application, registration; notice filing; reporting and compliance. Marion Lewis, Director, and Colleen Keefe, Staff Attorney, represented the Department.

This administrative regulation was amended as follows: (1) the RELATES TO paragraph was amended to correct statutory citations; (2) the NECESSITY, FUNCTION, AND CONFORMITY paragraph was amended to clearly state the necessity for and function served by the administrative regulation, as required by KRS 13A.220(3)(f); and (3) Section 1 was amended to: clarify when each form was required to be completed; and (b) to comply with the: 1. format requirements of KRS 13A.220(4); and 2. drafting requirements of KRS 13A.222(4).

808 KAR 10:020. Capital, records and reporting requirements of broker-dealers. This administrative regulation was amended as follows:

(1) the RELATES TO and STATUTORY AUTHORITY paragraphs were amended to correct statutory citations; (2) the NECESSITY, FUNCTION, AND CONFORMITY paragraph was amended to clearly state the necessity for and function served by the administrative regulation, as required by KRS 13A.220(3)(f); and (3) Section 1 was amended to comply with the: (a) format requirements of KRS 13A.220(4); and (b) drafting requirements of KRS 13A.222(4).

808 KAR 10:030. Conduct of broker-dealers and employees; investment advisers and representatives. This administrative regulation was amended as follows: (1) the RELATES TO and STATUTORY AUTHORITY paragraphs were amended to correct statutory citations; (2) the NECESSITY, FUNCTION, AND CONFORMITY paragraph was amended to clearly state the necessity for and function served by the administrative regulation, as required by KRS 13A.220(3)(f); and (3) Sections 1 through 3 were amended to comply with the: (a) format requirements of KRS 13A.220(4); and (b) drafting requirements of KRS 13A.222(4).

808 KAR 10:040. Dishonest or unethical practice defined. This administrative regulation was amended as follows: (1) the RELATES TO paragraph was amended to correct statutory citations; (2) the NECESSITY, FUNCTION, AND CONFORMITY paragraph was amended to clearly state the necessity for and function served by the administrative regulation, as required by KRS 13A.220(3)(f); and (3) Section 1 was amended to comply with the: (a) format requirements of KRS 13A.220(4); and (b) drafting requirements of KRS 13A.222(4).

808 KAR 10:080. Guidelines for issuers. This administrative regulation was amended as follows: (1) the RELATES TO paragraph was amended to correct statutory citations; (2) the NECESSITY, FUNCTION, AND CONFORMITY paragraph was amended to clearly state the necessity for and function served by the administrative regulation, as required by KRS 13A.220(3)(f); and (3) Section 1 was amended to comply with the: (a) format requirements of KRS 13A.220(4); and (b) drafting requirements of KRS 13A.222(4).

808 KAR 10:090. Issuer's reports. This administrative regulation was amended as follows: (1) the RELATES TO paragraph was amended to correct statutory citations; (2) the NECESSITY, FUNCTION, AND CONFORMITY paragraph was amended to clearly state the necessity for and function served by the administrative regulation, as required by KRS 13A.220(3)(f); and (3) Section 1 was amended to comply with the: (a) format requirements of KRS 13A.220(4); and (b) drafting requirements of KRS 13A.222(4).

808 KAR 10:110. Records of investment advisers. This administrative regulation was amended as follows: (1) the RELATES TO and STATUTORY AUTHORITY paragraphs were amended to correct statutory citations; (2) the NECESSITY, FUNCTION, AND CONFORMITY paragraph was amended to clearly state the necessity for and function served by the administrative regulation, as required by KRS 13A.220(3)(f); and (3) Section 1 was amended to comply with the: (a) format requirements of KRS 13A.220(4); and (b) drafting requirements of KRS 13A.222(4).

808 KAR 10:130. Amendments to registration statement. This administrative regulation was amended as follows: (1) the RELATES TO paragraph was amended to correct statutory citations; (2) the NECESSITY, FUNCTION, AND CONFORMITY paragraph was amended to clearly state the necessity for and function served by the administrative regulation, as required by KRS 13A.220(3)(f); and (3) Section 1 was amended to comply with the: (a) format requirements of KRS 13A.220(4); and (b) drafting requirements of KRS 13A.222(4).

808 KAR 10:141. Repeal of 808 KAR 10:140, 808 KAR 10:190, 808 KAR 10:220, 808 KAR 10:230, and 808 KAR 10:270. This administrative regulation was amended as follows: the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Section 1 were amended to comply with the drafting requirements of KRS 13A.222(4).

808 KAR 10:150. Registration exemptions. This administrative regulation was amended as follows: (1) the RELATES TO and STATUTORY AUTHORITY paragraphs were amended to correct statutory citations; (2) the NECESSITY, FUNCTION, AND CONFORMITY paragraph was amended to clearly state the necessity for and function served by the administrative regulation, as required by KRS 13A.220(3)(f); and (3) Section 1 was amended to comply with

the: (a) format requirements of KRS 13A.220(4); and (b) drafting requirements of KRS 13A.222(4).

808 KAR 10:160. Definitions. Subcommittee staff stated that: (1) pursuant to KRS 13A.222(4)(e), a definitions administrative regulation was required to be the first administrative regulation of a specific chapter of the Kentucky Administrative Regulations Service to which the definitions applied; and (2) after this administrative regulation became effective, the agency will contact the Regulations Compiler to request that this administrative regulation be renumbered as the first administrative regulation in 808 KAR Chapter 10.

This administrative regulation was amended as follows: (1) the TITLE was amended to comply with the requirements for definitions established in KRS 13A.222(4)(e); (2) the RELATES TO paragraph was amended to correct statutory citations; (3) the NECESSITY, FUNCTION, AND CONFORMITY paragraph was amended to clearly state the necessity for and function served by the administrative regulation, as required by KRS 13A.220(3)(f); and (4) Section 1 was amended to comply with the: (a) format requirements of KRS 13A.220(4); and (b) drafting requirements of KRS 13A.222(4).

808 KAR 10:170. Exemption claims from securities registration; form. This administrative regulation was amended as follows: (1) the RELATES TO and STATUTORY AUTHORITY paragraphs were amended to correct statutory citations; (2) the NECESSITY, FUNCTION, AND CONFORMITY paragraph was amended to clearly state the necessity for and function served by the administrative regulation, as required by KRS 13A.220(3)(f); (3) Sections 1 and 2 were amended to comply with the: (a) format requirements of KRS 13A.220(4); and (b) drafting requirements of KRS 13A.222(4); and (4) a new Section 3 was created to incorporate by reference the required material.

808 KAR 10:200. Investment advisers' minimum liquid capitalization; bond. This administrative regulation was amended as follows: (1) the RELATES TO and STATUTORY AUTHORITY paragraphs were amended to correct statutory citations; (2) the NECESSITY, FUNCTION, AND CONFORMITY paragraph was amended to clearly state the necessity for and function served by the administrative regulation, as required by KRS 13A.220(3)(f); and (3) Section 1 was amended to comply with the: (a) format requirements of KRS 13A.220(4); and (b) drafting requirements of KRS 13A.222(4).

808 KAR 10:210. Registration exemptions - Federal Regulation D. This administrative regulation was amended as follows: (1) the RELATES TO and STATUTORY AUTHORITY paragraphs were amended to correct statutory citations; (2) the NECESSITY, FUNCTION, AND CONFORMITY paragraph was amended to clearly state the necessity for and function served by the administrative regulation, as required by KRS 13A.220(3)(f); and (3) Sections 1 and 2 were amended to comply with the: (a) format requirements of KRS 13A.220(4); and (b) drafting requirements of KRS 13A.222(4).

808 KAR 10:240. Registration exemptions - sale of business. This administrative regulation was amended as follows: (1) the STATUTORY AUTHORITY TO paragraph was amended to correct statutory citations; (2) the NECESSITY, FUNCTION, AND CONFORMITY paragraph was amended to clearly state the necessity for and function served by the administrative regulation, as required by KRS 13A.220(3)(f); and (3) Section 1 was amended to comply with the: (a) format requirements of KRS 13A.220(4); and (b) drafting requirements of KRS 13A.222(4).

808 KAR 10:260. Examination requirement for individuals advising the public on securities, broker-dealers, and agents. This administrative regulation was amended as follows: (1) the RELATES TO, STATUTORY AUTHORITY, and NECESSITY, FUNCTION, AND CONFORMITY paragraphs were amended to correct statutory citations; and (2) Sections 1, 2, and 4 were amended to comply with the: (a) format requirements of KRS 13A.220(4); and (b) drafting requirements of KRS 13A.222(4).

808 KAR 10:300. Registration exemptions - pension plans. This administrative regulation was amended as follows: (1) the RELATES TO paragraph was amended to correct statutory citations; and (2) Section 1 was amended to comply with the: (a) format requirements of KRS 13A.220(4); and (b) drafting requirements of KRS 13A.222(4).

808 KAR 10:310. Broker-dealer agent de minimis rules. This administrative regulation was amended as follows: (1) the RELATES

TO paragraph was amended to correct statutory citations; (2) the NECESSITY, FUNCTION, AND CONFORMITY paragraph was amended to clearly state the necessity for and function served by the administrative regulation, as required by KRS 13A.220(3)(f); and (3) Sections 1 and 2 were amended to comply with the: (a) format requirements of KRS 13A.220(4); and (b) drafting requirements of KRS 13A.222(4).

808 KAR 10:320. Broker-dealer books and records requirements. This administrative regulation was amended as follows: (1) the RELATES TO and STATUTORY AUTHORITY paragraphs were amended to correct statutory citations; (2) the NECESSITY, FUNCTION, AND CONFORMITY paragraph was amended to clearly state the necessity for and function served by the administrative regulation, as required by KRS 13A.220(3)(f); and (3) Section 1 was amended to comply with the: (a) format requirements of KRS 13A.220(4); and (b) drafting requirements of KRS 13A.222(4).

808 KAR 10:330. Notice filing requirements for covered advisers. This administrative regulation was amended as follows: (1) the RELATES TO and STATUTORY AUTHORITY paragraphs were amended to correct statutory citations; (2) the NECESSITY, FUNCTION, AND CONFORMITY paragraph was amended to clearly state the necessity for and function served by the administrative regulation, as required by KRS 13A.220(3)(f); (3) Section 1 was amended to comply with the: (a) format requirements of KRS 13A.220(4); and (b) drafting requirements of KRS 13A.222(4); and (4) Section 2 was amended to incorporate by reference the required application form.

808 KAR 10:340. Registration exemption for certain limited offerings made exclusively to accredited investors. This administrative regulation was amended as follows: (1) the RELATES TO paragraph was amended to correct statutory citations; (2) the NECESSITY, FUNCTION, AND CONFORMITY paragraph was amended to clearly state the necessity for and function served by the administrative regulation, as required by KRS 13A.220(3)(f); and (3) Section 1 was amended to comply with the: (a) format requirements of KRS 13A.220(4); and (b) drafting requirements of KRS 13A.222(4).

808 KAR 10:350. Internet advertising. This administrative regulation was amended as follows: (1) the RELATES TO paragraph was amended to correct statutory citations; (2) the NECESSITY, FUNCTION, AND CONFORMITY paragraph was amended to clearly state the necessity for and function served by the administrative regulation, as required by KRS 13A.220(3)(f); and (3) Sections 1 and 2 were amended to comply with the: (a) format requirements of KRS 13A.220(4); and (b) drafting requirements of KRS 13A.222(4).

808 KAR 10:360. Safe harbor for limited liability company membership interests. This administrative regulation was amended as follows: (1) the RELATES TO paragraph was amended to correct statutory citations; (2) the NECESSITY, FUNCTION, AND CONFORMITY paragraph was amended to clearly state the necessity for and function served by the administrative regulation, as required by KRS 13A.220(3)(f); and (3) Sections 1, 2, and 3 were amended to comply with the: (a) format requirements of KRS 13A.220(4); and (b) drafting requirements of KRS 13A.222(4).

808 KAR 10:370. Securities offered on the internet but not sold in Kentucky. This administrative regulation was amended as follows: (1) the RELATES TO paragraph was amended to correct statutory citations; (2) the NECESSITY, FUNCTION, AND CONFORMITY paragraph was amended to clearly state the necessity for and function served by the administrative regulation, as required by KRS 13A.220(3)(f); (3) Sections 1 through 4 were amended to comply with the: (a) format requirements of KRS 13A.220(4); and (b) drafting requirements of KRS 13A.222(4); and (4) a new Section 5 was created to incorporate by reference the required registration form.

808 KAR 10:380. Solicitations of interest prior to the filing of a registration statement. This administrative regulation was amended as follows: (1) the RELATES TO paragraph was amended to correct statutory citations; (2) the NECESSITY, FUNCTION, AND CONFORMITY paragraph was amended to clearly state the necessity for and function served by the administrative regulation, as required by KRS 13A.220(3)(f); (3) Sections 1 and 2 were amended to comply with the: (a) format requirements of KRS 13A.220(4); and (b) drafting requirements of KRS 13A.222(4); and (4) a new Section 3 was created to incorporate by reference the required application form.

808 KAR 10:390. Confidentially disclosed documents. Subcommittee staff stated that: (1) the initial staff review stated that this administrative regulation did not conform to statutory authority; and (2) because KRS 292.500(17) authorized the commissioner to release confidential information under specified circumstances, this administrative body was authorized to promulgate this administrative regulation.

This administrative regulation was amended as follows: (1) the RELATES TO paragraph was amended to correct statutory citations; (2) the NECESSITY, FUNCTION, AND CONFORMITY paragraph was amended to clearly state the necessity for and function served by the administrative regulation, as required by KRS 13A.220(3)(f); and (3) Section 1 was amended to comply with the: (a) format requirements of KRS 13A.220(4); and (b) drafting requirements of KRS 13A.222(4).

Cabinet For Families And Children: Department For Social Insurance: Division Of Management And Development: Public Assistance

904 KAR 2:015 & E. Supplemental programs for persons who are aged, blind, or have a disability. Ruth Friedheim, Branch Manager, Janice Cline, and Joyce Lea represented the Department.

This administrative regulation was amended as follows: (1) Section 7(1)(a) was amended to clearly designate the dates and amounts of the standard of need, pursuant to KRS 13A.222(4)(a); (2) a new Section 15 was created to incorporate by reference the required Application, Report, and Monthly Statement forms; and (3) Sections 3, 8, 10, and 11 were amended to comply with the drafting requirements of KRS 13A.222(4).

Department for Social Services: Division of Family Services: Child Welfare

905 KAR 1:360 & E. Private child care levels of care. Michael Cheek, Pat Wilson, Department for Social Services, Bart Baldwin, Children's Alliance, Gordon S. Brown, President, Children's Alliance, and Home of the Innocents appeared before the Subcommittee. Mr. Baldwin stated that: (1) the Children's Alliance had submitted comments on this administrative regulation, November, 1997, and at the agency public hearing, May, 1998; (2) he had met yesterday with the agency and Subcommittee staff; (3) while he and the agency had met to discuss and attempt to resolve the issues raised by this administrative regulation, he: (a) could not agree to a proposed resolution of the issues raised without approval of his board and members; and (b) did not have enough time to meet with his board and membership. In response to questions by Chairman Arnold, Subcommittee staff stated: (1) the issues raised by the Alliance had been raised at the public hearings; (2) Subcommittee staff met with agency staff and Mr. Baldwin last week in response to requests by several Subcommittee members; (3) the Cabinet was informed and had agreed that: (a) the pilot projects and contracts relating to them were required to be established and implemented by administrative regulation; (b) a contract, by itself, could not establish regulatory requirements or constitute the method by which a statute or appropriation was implemented; (c) conditions or requirements relating to a subject matter: 1. had to be contained in an administrative regulation; and 2. could not appear only in a contract or other document, even if incorporated by reference; and (d) if an administrative regulation that was the authority for the execution of a contract expired, continued use of the contract to implement the expired administrative regulation was prohibited; (3) the issue that had not been resolved related to cost reimbursement; and (4) Mr. Baldwin had been informed that: (a) while an agency is restricted to offering amendments that related to the issues raised at the public hearings, the Subcommittee was not so restricted in the amendments it could propose to the agency; and (b) the Subcommittee meeting, and the meeting of the Interim Joint Committee on Health and Welfare were a public hearing on this administrative regulation.

Mr. Baldwin stated that the Alliance: (1) had not agreed with the reimbursement rate reduction that had been established by the emergency administrative regulation promulgated last Fall; and (2) would not agree with the reduced rates established by this administrative regulation.

In response to questions by Representative Lee, Mr. Baldwin stated that: (1) the emergency administrative regulation had imple-

mented a 7 1/2 % cut; (2) during the 1996 Regular Session of the General Assembly, the Alliance supported House Bill 677 that would have established a reimbursement methodology that complied with KRS 199.641, by relating reimbursements to provider allowable costs; and (3) House Bill 677 was not enacted.

Representative Lee stated that: (1) because the General Assembly did not enact House Bill 677, it was known that there would: (a) not be additional money in the current budget to support a higher reimbursement than was being paid providers under the emergency administrative regulation; and (b) be a 7 1/2 % reduction, that was reflected in the emergency administrative regulation; (2) to request the Subcommittee to find this administrative regulation deficient on the basis of the reimbursement rates it allows fails to identify a source of funds to pay for rates higher than those authorized by this administrative regulation; (3) the budget did not provide for money to restore the 7 1/2 % cut; (4) he understood that, while there was approximately 5 million dollars added to the budget, this addition would only fund the reimbursement rate: (a) established by this administrative regulation; and (b) reflecting the 7 1/2 % cut.

Mr. Baldwin stated that his objections were not based strictly on funding. Representative Lee stated that: (1) the foundation for Mr. Baldwin's complaint was the rate reduction; and (2) even if the Subcommittee found this administrative regulation deficient, the budget did not contain funds to raise the reimbursement rates.

In response to questions by Representative Lee, Mr. Baldwin stated that: (1) one of the problems with this administrative regulation was that, in violation of KRS 199.641, it did not specify the methodology by which the rates were determined; (2) in the most recent meetings with the Cabinet, the Alliance and the Cabinet had not reached an agreement on the methodology by which the rates were determined; (3) the rates were established by the Cabinet, without input by the Alliance on the methodology; and (4) a reduction in rates beyond the 7 1/2 % reduction imposed by this administrative regulation: (a) could be made by the Cabinet; and (b) would not be based on a methodology as required by statute.

Mr. Cheek stated that the amendment the Cabinet proposed to the Subcommittee established the: (1) methodology used to determine the rates; and (2) specific rates of reimbursement. In response to a question by Representative Lee, Subcommittee staff stated that the amendment was supposed to: (1) contain the specific reimbursement rates for each level of care; (2) specify that these rates would apply until June, 1999; (3) on July 1, 1999, the Cabinet would have to promulgate an administrative regulation to establish: (a) a methodology for the determination of rates; and (b) rates effective after June, 1999; (3) the amendment proposed by the Cabinet would: (a) delete language that provides for maximum rates, but does not establish the specific rates establish specific rates for each level of care; (b) establish specific rates that would be paid through June, 1999.

Mr. Brown stated that: (1) he operated a Louisville facility that provided: (a) temporary emergency shelter; (b) pregnant and parenting teen program for wards of the state; and (c) transitional housing; (2) KRS 199.641 provides that, when the Cabinet placed a child with a non-profit child caring facility, it must reimburse the facility the allowable cost of the child's care; (3) allowable cost was defined by federal circular, and is tied to the annual audit of the facility; (4) the Home of the Innocents, and other facilities around Kentucky that operate emergency shelters, have been arbitrarily excluded from the application of this administrative regulation in the setting of their rates; (5) the Home of the Innocents has not had a rate increase for 8 years; (6) many published rates for emergency shelters around the state are \$44 a day; (7) for \$44 a day, no one can provide a day of care for a child in an emergency shelter that was required to operate in compliance with the requirements of licensure and other regulatory requirements; (8) the Home of the Innocents had been excluded from participation in the levels of care administrative regulation in an arbitrary fashion; (9) this administrative regulation did not comply with KRS 199.641 and KRS Chapter 13A; (10) Kentucky did not appropriate sufficient funds for services for these children; and (11) the increase in costs attributable to the increase in the number of these children was borne by the providers.

Ms. Wilson stated that: (1) the budget enacted by the General Assembly at its 1996 Regular Session for the 1999-2000 biennium:

(a) provided: 1. for a specific amount for private child care services for each year of the biennium; and 2. that the contract reimbursements were based on reimbursement rates that were effective October 1, 1997; and (b) was based on the rates: (a) discussed at this meeting; and (b) based on the 7 1/2 % reduction; (2) the Cabinet had arrived at the amount of the reduction by considering the available budget and the average number of children served by private child care; and (3) the Department had faced an extremely large deficit in 1996, and considered elements required to achieve a balanced budget.

Mr. Baldwin stated that: (1) KRS Chapter 13A required this administrative regulation to contain the methodologies by which the rates were: (a) determined; and (b) reduced; (2) this administrative regulation did not contain these methodologies; and (3) because the methodologies were not established by administrative regulation, regulated entities were not informed of the methodologies used, or requirement imposed in the implementation of the program.

Mr. Cheek stated that the amendment proposed by the Cabinet stated: (1) the exact rates; (2) how the rates were determined; and (3) by limiting the rates to the period ending, June, 1999, required the Cabinet to promulgate another administrative regulation in order to change the rates.

In response to a question by Representative Lee, Mr. Baldwin stated that the amendment proposed by the Cabinet: (1) addressed some of the issues raised by the Alliance; and (2) did not establish the methodologies for the determination of rates that was required by statute.

Ms. Wilson stated that the amendment: (1) established how the reduction was determined; and (2) by limiting the period of reimbursement at the rates established by this administrative regulation to June 30, 1999, required the Cabinet to change the rates only by filing an amendment to this administrative regulation.

In response to a question by Representative Lee, Subcommittee staff stated that the: (1) to change the rates established by this administrative regulation, the Cabinet would have to file an amendment to this administrative regulation; (2) Cabinet position is that the statement in this administrative regulation relating to the determination of the rates established by this administrative regulation was the methodology required by statute; and (3) the limitation of the period during which these rates will be used to June, 1999, will require the Cabinet to amend this administrative regulation by emergency, July, 1999, to change the rates.

In response to a question by Representative Bruce, Subcommittee staff stated that the: (1) Cabinet could change the rates only by amending this administrative regulation; (2) amendment would have to be made, July, 1999; and (3) the issue of whether this administrative regulation contained the methodologies required by KRS Chapter 199 would be before the Subcommittee again.

Representative Lee stated that, after the Cabinet filed an amendment in July, 1999, Mr. Baldwin and the Subcommittee would have an opportunity to review the methodology issue as it applied to the new rates established by the 1999 administrative regulation. In response to questions by Representative Lee, Mr. Baldwin stated that the amendment proposed by the Cabinet: (1) addressed some of the issues he had raised; (2) did not address the issues relating to methodologies required by statute; and (3) because there had not been an opportunity to present the proposed amendment to his board or members, could not agree to the proposed amendment.

Representative Lee stated that: (1) because this administrative regulation would not be deferred, the Subcommittee wanted to address Mr. Baldwin's concerns over the amendment offered by the Cabinet; and (2) believed that the amendment addressed some of the issues raised and somewhat alleviated the problems faced by those regulated.

In response to questions by Representative Lee, Subcommittee staff stated that: (1) the amendment proposed by the Cabinet would establish specific rates; (2) existing language did not comply with KRS Chapter 13A, because it: (a) established a maximum rate; and (b) did not establish the: 1. actual rates; or 2. method by which the actual rates would be determined; (3) while the amendment proposed by the Cabinet established specific rates, questions had been raised because it was believed that the methodology for the estab-

lishment and reduction of the rates were not contained in this administrative regulation or the amendment proposed by the Cabinet.

In response to a question by Representative Lee, Ms. Wilson stated that the amendment to this administrative regulation: (1) reflected the 7 1/2 % October reduction; (2) did not authorize reduction of the rates it established; and (3) reduction or increase of the specific rates could be made only by the promulgation of an amendment to this administrative regulation, that must be filed July, 1999.

Chairman Arnold stated that the: (1) amendment addressed some of the issues raised; and (2) other issues would be addressed when an amendment was filed in July, 1999.

Representative Lee stated that: (1) no one had fought harder than he for issues relating to children during the 1998 Regular Session; (2) he wanted to go on record with his request to Mr. Baldwin to meet with legislators sufficiently before the next Regular Session to determine whether providers were receiving fair reimbursement and adequate payment for services provided; (3) if the Cabinet did not budget the money, or if money was not included in the budget, Mr. Baldwin should enlist the help of the General Assembly; (4) the General Assembly should make the effort to increase funding to an amount adequate to reimburse providers; (5) he, and other legislators, were committed to provide adequate funding; and (6) the issues should be addressed early enough to ensure that the issues will be governed by statute, rather than administrative regulation.

Chairman Arnold stated that: (1) he agreed with Representative Lee; and (2) these issues would be resolved in advance; (3) Mr. Baldwin and others who were affected by these issues would be given notice; and (4) those affected by these issues should not wait until just before a meeting to attempt to resolve the issues raised.

Representative Bruce: (1) stated that he agreed; and (2) advised Mr. Baldwin and other interested in the issues to start early to resolve these issues, and that several Subcommittee members were also members of Appropriations and Revenue.

This administrative regulation was amended to establish the: (1) method by which the rates for each level of care were established; and (2) specific reimbursement rates for each level of care.

The Subcommittee approved a motion by Representative Bruce, seconded by Representative Lee, to approve the amendment to this administrative regulation, and this administrative regulation as amended.

The Subcommittee determined that the following administrative regulations complied with statutory requirements:

University Of Kentucky: Agricultural Experiment Station: Fertilizer

12 KAR 4:170E. Maximum chlorine guarantee for tobacco fertilizers. Wilbur Frye, Director of Regulatory Services, represented the University.

Subcommittee staff stated that this emergency administrative regulation would not be replaced by an ordinary administrative regulation.

Board of Accountancy

201 KAR 1:300. Rules of professional conduct. Susan Stopher represented the Board. In response to a question by Chairman Arnold, Ms. Stopher stated that the Rules of Professional Conduct was a two-volume set of rules governing professional conduct by accountants.

Natural Resources And Environmental Protection Cabinet: Department For Environmental Protection: Division For Air Quality: Asbestos

401 KAR 58:005. Accreditation of asbestos professionals. Diana Andrews, Assistant Director of the Division; Kenneth Hines, Branch Manager for Program Planning; and Diana Maxwell, represented the Department.

In response to a question by Chairman Arnold, Ms. Andrews stated that asbestos professionals were accredited to ensure proper performance of asbestos removal.

In response to questions by Chairman Arnold, Mr. Hines stated that: (1) an asbestos professional: (a) had to be certified because he removed or worked with asbestos in: 1. public buildings; and 2. schools; and (b) ran the risk of: 1. damaging the asbestos; 2. re-

leasing it into the air; and 3. harming children or occupants of a building; (2) federal regulations required the certification of asbestos professionals; (3) to become certified, an applicant was required to: (a) take a training course approved by the Department; (b) meet the requirements for the course; and (c) apply for certification from the Division after successfully completing the course; (4) the Division: (a) reviewed the applicant's performance in the course; and (b) issued the certification; (5) the Department: (a) inspected removal and containment operations of asbestos projects; and (b) examined the workers and supervisors to determine whether they were certified; (6) workplace standards required containment of airborne asbestos particles; and (7) asbestos professionals were required to: (a) put up barriers; (b) comply with: 1. air flow requirements; and 2. wetting requirements that were established to prevent dry asbestos powder flakes from becoming airborne; and (c) complete training on the use of techniques to prevent the asbestos contamination of buildings.

In response to a question by Representative Bruce, Mr. Hines stated that: (1) asbestos workers were required to comply with requirements established to avoid contamination; (2) these requirements included wearing: (a) a breathing apparatus to prevent breathing dust, if they worked in an asbestos containment area; and (b) certain types of clothing.

Labor Cabinet: Department Of Workplace Standards: Division Of Occupational Safety And Health Compliance: Division Of Occupational Safety And Health Education And Training: Occupational Safety And Health

803 KAR 2:301. Adoption and extension of established federal standards. Kembra Taylor, General Counsel, and Bill Ralston, Safety Standards Specialist, represented the Cabinet.

803 KAR 2:320. Air contaminants.

803 KAR 2:500. Maritime employment.

Office of Labor Management Relations and Mediation: Collective Bargaining and Arbitration

803 KAR 3:050. Arbitration. Kembra Taylor, General Counsel; Larry Roberts, Office of Labor Management Relations and Mediation; and Gary Moberly, Director, represented the Cabinet.

Subcommittee staff stated that this administrative regulation was deferred from the May 11, 1998, meeting to give the Department an opportunity to present information to the Subcommittee comparing the proposed rates for Kentucky compared with the rates of surrounding states.

Ms. Taylor stated that: (1) at the May 11, 1998, Subcommittee members raised questions about this administrative regulation, because it increased the amount an arbitrator may charge for conducting labor management hearings and arbitration procedures; and (2) the Cabinet provided additional information to the Subcommittee members that indicated that: (a) Kentucky's fees had been consistently lower than the rates charged by surrounding states; and (b) the proposed rate increase would still place Kentucky's rates below the rates charged by surrounding states.

Department of Workers' Claims

803 KAR 25:010. Procedure for adjustments of claims. Carla Montgomery, Attorney, represented the Department. In response to a question by Chairman Arnold, Ms. Montgomery stated that this administrative regulation was amended to: (1) comply with the drafting requirements of KRS Chapter 13A; and (2) clarify the procedures for a claim before an administrative law judge or arbitrator.

In response to a question by Representative Bruce, Subcommittee staff stated that this administrative regulation: (1) established procedures for a claim determination; and (2) did not relate to rates.

Department of Insurance: Assets and Liabilities

806 KAR 6:100&E. Actuarial opinion and memorandum. George Nichols, Commissioner, and Sharron Burton, Staff Attorney, represented the Department.

Department of Financial Institutions: Securities

808 KAR 10:225. Administrative hearing procedures. Marion Lewis, Director, and Colleen Keefe, Staff Attorney, represented the Department.

Department of Housing, Buildings and Construction: Heating, Ventilation, and Air Conditioning Licensing Requirements

815 KAR 8:045 & E. "Limited" licenses for journeyman HVAC mechanics. Chuck Cotton, Commissioner, represented the Department.

Division of Plumbing: Plumbing

815 KAR 20:020. Parts or materials list.

815 KAR 20:055. Water heater devices. In response to questions by Representative Bruce, Mr. Cotton stated that: (1) this administrative regulation was amended to conform to statutory amendments enacted in 1992; and (2) KRS 318.200: (a) required that the seller of a hot water heater in a first or second class city report the sale to the Department of Housing; and (b) had been amended in 1992 to apply to the sale of a hot water heater in all Kentucky cities and counties; and (c) was intended to ensure that all hot water heaters were inspected.

In response to questions by Representative Allen, Mr. Cotton stated that: (1) while an individual who was not a plumber could buy a water heater: (a) the merchant was required to report the sale; and (b) an inspection would occur; (2) many years ago, an improperly installed water heater would: (a) not have the safety valve on correctly; (b) not be vented properly; and (c) have hot water leak from the safety valve and burn people; (3) an inspection: (a) was conducted to insure that the: 1. heater was properly installed; and 2. water was properly vented; and (b) did not inspect the actual heater; (4) if a homeowner, who was not a plumber, bought a hot water heater, he was required to: (a) install it in his own home; and (b) pay \$10 for a permit for an inspection of his installation; and (5) if a hot water heater was purchased in Tennessee and transported into Kentucky, the heater and its installation would not be inspected.

815 KAR 20:120. Water supply and distribution.

The Subcommittee and promulgating administrative bodies agreed to defer consideration of the following administrative regulations to the July, 1998 meeting of the Subcommittee:

Finance And Administration Cabinet: Office Of Financial Management And Economic Analysis: Kentucky Private Activity Bond Allocation Committee

200 KAR 15:010E. Formula for allocation of private activity bonds.

Real Estate Commission

201 KAR 11:011. Definitions for 201 KAR Chapter 11.

201 KAR 11:170. Private school approval.

201 KAR 11:230. Mandatory continuing education.

Department Of Agriculture: Division Of Animal Health: Live-stock Sanitation

302 KAR 20:040E. Entry into Kentucky.

Pesticides

302 KAR 31:040. Storage and handling of pesticides and bulk fertilizer. Mark Farrow, Deputy Commissioner and General Counsel, represented the Department.

In response to a request by Chairman Arnold, Mr. Farrow agreed to defer consideration of this administrative regulation.

Justice Cabinet: Department Of State Police: Sex Offender Registration System

502 KAR 31:010E. Sex Offender Registration System.

Transportation Cabinet: Department Of Vehicle Regulation: Division Of Motor Vehicle Enforcement: Administration

601 KAR 2:020E. Drivers' privacy protection.

Education, Arts And Humanities Cabinet: Department Of Libraries And Archives: Libraries

725 KAR 2:080. Interstate Library Compact.

Workforce Development Cabinet: Department For Employment Services: Unemployment Insurance

787 KAR 1:210E. Employer contribution rates.

VOLUME 25, NUMBER 1 – JULY 1, 1998

Labor Cabinet: Department Of Workplace Standards: Office Of Labor Management Relations And Mediation: Kentucky Labor Management Matching Grant Program

803 KAR 6:010E. Kentucky Labor Management Matching Grant Program.

Kentucky Racing Commission: Thoroughbred Racing

810 KAR 1:001. Definitions.

810 KAR 1:009. Jockeys and apprentices.

810 KAR 1:015. Claiming races.

810 KAR 1:016. Running of the race.

Harness Racing

811 KAR 1:090. Stimulants and drugs.

811 KAR 1:215. Kentucky Standardbred Development Fund.

Cabinet For Health Services: Office Of Inspector General: Health Services and Facilities

902 KAR 20:026. Operations and services; skilled nursing facilities.

902 KAR 20:048. Operations and services; nursing homes.

902 KAR 20:051. Operation and services; intermediate care.

902 KAR 20:180. Psychiatric hospitals; operation and services.

Division for Public Health Protection and Safety: Milk and Milk Products

902 KAR 50:031. Standards for producer eligibility for manufacturing grade milk.

902 KAR 50:032. Standards for farm requirements for manufacturing grade milk.

902 KAR 50:033. Standards for enforcement procedures for manufacturing grade milk.

Cabinet For Health Services: Department For Medicaid Services: Division Of Administration And Development: Medicaid Services

907 KAR 1:006E. Coverage for persons eligible for Title XVIII benefits.

907 KAR 1:011E. Technical eligibility requirements.

907 KAR 1:022E. Nursing facility and intermediate facility for the mentally retarded services.

907 KAR 1:025E. Payment for nursing facility and intermediate facility for the mentally retarded services.

907 KAR 1:560E. Medicaid hearing and appeals regarding eligibility.

907 KAR 1:563E. Medicaid covered services hearing appeals process for recipients.

907 KAR 1:605E. Medicaid procedures for determining initial and continuing eligibility.

907 KAR 1:640E. Income standards for Medicaid.

907 KAR 1:645E. Resource standards for Medicaid.

907 KAR 1:755E. Preadmission screening and resident review (PASRR) program.

Payment and Services

907 KAR 3:030E. Coverage and payments for Impact Plus services.

Department for Mental Health and Mental Retardation Services: Mental Health

908 KAR 2:210E. Domestic violence offender treatment certification standards.

908 KAR 2:190. Supported living services.

The Subcommittee adjourned at 11:35 a.m. until July 14, 1998, at 10 a.m. in Room 149 of the Capitol Annex.

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.

**Interim Joint Committee on Agriculture and
Natural Resources
Meeting of June 10, 1998**

Administrative regulations were available for consideration by the Interim Joint Committee on Agriculture and Natural Resources during its meeting of June 10, 1998 having been referred to the Committee on May 14, 1998, pursuant to KRS 13A.290(6):

The following administrative regulations were found to comply with KRS Chapter 13A:

Department of Agriculture
302 KAR 10:100

Natural Resources and Environmental Protection Cabinet
Division of Air Quality

401 KAR 63:060	401 KAR 63:640	401 KAR 63:820
401 KAR 63:100	401 KAR 63:680	401 KAR 63:900
401 KAR 63:104	401 KAR 63:741	401 KAR 63:920
401 KAR 63:541	401 KAR 63:780	401 KAR 63:940
401 KAR 63:560	401 KAR 63:800	401 KAR 63:960

Department of Surface Mining Reclamation and Enforcement

405 KAR 8:001	405 KAR 16:090	405 KAR 18:090
405 KAR 8:030	405 KAR 16:100	405 KAR 18:100
405 KAR 8:040	405 KAR 16:160	405 KAR 18:160
405 KAR 16:001	405 KAR 18:001	405 KAR 18:210

The following administrative regulations were found to be deficient pursuant to KRS 13A.290(7) and 13A.030(2):None

The Committee rationale for each finding of deficiency is attached to and made a part of this memorandum.

The following administrative regulations were approved as amended at the Committee meeting pursuant to KRS 13A.320:None

The wording of the amendment of each such administrative regulation is attached to and made a part of this memorandum.

The following administrative regulation was deferred pursuant to KRS 13A.300: None

The following administrative regulation was reviewed but no action was taken: None

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the June 10, 1998 meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

**INTERIM JOINT COMMITTEE ON Health and Welfare
Meeting of June 11, 1998**

The following administrative regulations were available for consideration by the Interim Joint Committee on Health and Welfare during its meeting of June 11, 1998, having been referred to the Committee on June 9, 1998, pursuant to KRS 13A.290(6):

201 KAR 8:400
201 KAR 20:056
904 KAR 2:015 & E

905 KAR 1:360 & E

After discussion, a motion to approve 904 KAR 2:015 & E and 905 KAR 1:360 & E was made by Representative Burch, seconded by Senator Pendleton, and approved by voice vote. After discussion of the first two administrative regulations, the question of the absence of a quorum was called and the chairman determined the committee did not have a quorum to act upon 201 KAR 8:400 or 201 KAR 20:056.

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the June 11, 1998 meeting, which are hereby incorporated by reference.

CUMULATIVE SUPPLEMENT

Locator Index - Effective Dates A2

The Locator Index lists all administrative regulations published in VOLUME 25 of the Administrative Register from July, 1998 through June, 1999. 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 24 are those administrative regulations that were originally published in Volume 24 (last year's) issues of the Administrative Register but had not yet gone into effect when the 1998 bound Volumes were published.

KRS Index A8

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 25 of the Administrative Register.

Subject Index A9

The Subject Index is a general index of administrative regulations published in VOLUME 25 of the Administrative Register, and is mainly broken down by agency.

LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	24 Ky.R Page No.	Effective Date	Regulation Number	24 Ky.R. Page No.	Effective Date
VOLUME 24					
The administrative regulations listed under VOLUME 24 are those administrative regulations that were originally published in Volume 24 (last year's) issues of the Administrative Register but had not yet gone into effect when the 1998 bound Volumes were published.					
EMERGENCY ADMINISTRATIVE REGULATIONS: (Note: Emergency regulations expire 170 days from publication, or 170 days from publication plus number of days of requested extensions, or upon replacement or repeal, whichever occurs first)			201 KAR 11:175		
			Amended	2414	(See Volume 25)
			201 KAR 11:190		
			Amended	2733	
			201 KAR 11:230		
			Amended	2415	
12 KAR 4:170E	2326	4-7-98	201 KAR 11:350		
Expires		10-18-98	Amended	2417	(See Volume 25)
31 KAR 4:120E	2575	4-22-98	201 KAR 19:087	2241	
200 KAR 15:010E	2327	4-7-98	As Amended	2617	6-15-98
302 KAR 20:040E	2330	4-3-98	201 KAR 19:095		
401 KAR 5:002E	2576	4-17-98	Amended	2141	
401 KAR 5:009E	2588	4-17-98	As Amended	2619	6-15-98
501 KAR 1:030E	1625	1-8-98	201 KAR 20:056		
501 KAR 6:020E	1631	1-8-98	Amended	2421	(See Volume 25)
501 KAR 6:080E	1633	1-8-98	201 KAR 30:050		
502 KAR 31:010E	2076	2-27-98	Amended	2736	
601 KAR 2:020E	1863	2-13-98	202 KAR 3:010	2782	
787 KAR 1:210E	2078	3-10-98	202 KAR 3:030	2783	
803 KAR 6:010E	2333	3-20-98	301 KAR 2:041		
806 KAR 6:100E	1227	10-24-97	Amended	2739	
806 KAR 17:110E	1492	12-12-97	301 KAR 2:172		
Replaced	2689	6-15-98	Amended	2741	
806 KAR 17:141E	2601	4-15-98	301 KAR 2:174		
806 KAR 17:150E	2602	4-15-98	Amended	2744	
815 KAR 8:045E	2079	2-27-98	301 KAR 2:176		
904 KAR 2:015E	1634	1-12-98	Amended	2745	
Replaced		6-11-98	301 KAR 2:178		
905 KAR 2:160E	2605	4-20-98	Amended	2748	
907 KAR 1:006E	2337	4-6-98	301 KAR 2:230		
907 KAR 1:011E	2339	4-6-98	Amended	2752	
907 KAR 1:022E	2080	2-18-98	301 KAR 3:010		
907 KAR 1:025E	2086	2-18-98	Amended	2422	(See Volume 25)
907 KAR 1:026E	2612	4-24-98	301 KAR 3:022		
907 KAR 1:560E	2093	2-18-98	Amended	2754	
907 KAR 1:563E	2097	2-18-98	301 KAR 3:030		
907 KAR 1:605E	2344	4-6-98	Amended	2756	
907 KAR 1:626E	2614	4-24-98	302 KAR 10:100	2242	
907 KAR 1:640E	2346	4-6-98	As Amended	2620	6-10-98
907 KAR 1:645E	2350	4-6-98	302 KAR 15:010		
907 KAR 1:755E	2100	2-18-98	Amended	2757	
907 KAR 3:030E	1639	12-19-97	302 KAR 31:040	2243	
908 KAR 2:210E	2352	4-6-98	401 KAR 58:005		
			Amended	1920	
			Amended	2710	
ORDINARY ADMINISTRATIVE REGULATIONS:			401 KAR 58:025		
			Amended	1927	
13 KAR 2:045			Amended	2717	
Amended	2136		401 KAR 63:060		
Amended	2705	(See Volume 25)	Amended	1765	6-10-98
201 KAR 1:300			401 KAR 63:100		
Amended	2406		Amended	1770	6-10-98
201 KAR 8:400			401 KAR 63:104	1798	6-10-98
Amended	2409	(See Volume 25)	401 KAR 63:541	1800	6-10-98
201 KAR 11:011			401 KAR 63:560	1801	6-10-98
Amended	2410		401 KAR 63:640	1803	
201 KAR 11:147			As Amended	2621	6-10-98
Amended	2412	(See Volume 25)	401 KAR 63:680	1805	6-10-98
201 KAR 11:170			401 KAR 63:741	1806	
Amended	2413	(See Volume 25)	As Amended	2621	6-10-98

LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	24 Ky.R. Page No.	Effective Date	Regulation Number	24 Ky.R. Page No.	Effective Date
401 KAR 63:780	1808	6-10-98	601 KAR 2:020	2784	
401 KAR 63:800	1810	6-10-98	603 KAR 4:040		
401 KAR 63:820	1811	6-10-98	Amended	1936	
401 KAR 63:900	1813	6-10-98	Amended	2395	6-16-98
401 KAR 63:920	1814	6-10-98	701 KAR 5:110		
401 KAR 63:940	1816	6-10-98	Amended	2425	(See Volume 25)
401 KAR 63:960	1818	6-10-98	704 KAR 3:303		
405 KAR 8:001			Amended	1941	
Amended	667		Amended	2401	
As Amended	2622	6-10-98	As Amended	2681	6-16-98
405 KAR 8:030			704 KAR 20:082	2481	(See Volume 25)
Amended	675		704 KAR 20:670		
Amended	1313		Amended	2426	(See Volume 25)
As Amended	2628	6-10-98	725 KAR 2:080	2482	
405 KAR 8:040			781 KAR 1:020		
Amended	687		Amended	2429	(See Volume 25)
Amended	1325		781 KAR 1:040		
As Amended	2639	6-10-98	Amended	2433	(See Volume 25)
405 KAR 16:001			781 KAR 1:061	2787	
Amended	704		787 KAR 1:210		
As Amended	2652	6-10-98	Amended	2767	
405 KAR 16:060			803 KAR 2:301		
Amended	710		Amended	2152	
Amended	1341	(See Volume 25)	803 KAR 2:320		
405 KAR 16:090			Amended	2154	
Amended	716		803 KAR 2:500		
As Amended	2658	6-10-98	Amended	2160	
405 KAR 16:100			803 KAR 3:050		
Amended	719		Amended	2163	
As Amended	2660	6-10-98	803 KAR 25:010		
405 KAR 16:160			Amended	2436	
Amended	723		803 KAR 25:096		
As Amended	2663	6-10-98	Amended	2166	
405 KAR 18:001			As Amended	2681	6-16-98
Amended	725		803 KAR 25:101		
As Amended	2664	6-10-98	Amended	2169	
405 KAR 18:060			As Amended	2684	6-16-98
Amended	732		803 KAR 25:190		
Amended	1347	(See Volume 25)	Amended	1771	
405 KAR 18:090			Amended	2124	
Amended	738		As Amended	2686	6-16-98
As Amended	2670	6-10-98	806 KAR 6:100	2248	
405 KAR 18:100			Amended	2719	
Amended	741		806 KAR 17:110	2257	
As Amended	2672	6-10-98	As Amended	2689	6-16-98
405 KAR 18:160			808 KAR 10:010		
Amended	745		Amended	2172	(See Volume 25)
As Amended	2675	6-10-98	808 KAR 10:020		
405 KAR 18:210			Amended	2173	(See Volume 25)
Amended	747		808 KAR 10:030		
As Amended	2676	6-10-98	Amended	2174	(See Volume 25)
501 KAR 1:030			808 KAR 10:040		
Amended	2143	(See Volume 25)	Amended	2176	(See Volume 25)
501 KAR 6:020			808 KAR 10:080		
Amended	2149		Amended	2177	(See Volume 25)
501 KAR 6:080			808 KAR 10:090		
Amended	2152		Amended	2178	(See Volume 25)
600 KAR 6:050			808 KAR 10:110		
Amended	2760		Amended	2179	
600 KAR 6:060			Amended	2728	(See Volume 25)
Amended	2762		808 KAR 10:130		
600 KAR 6:080			Amended	2180	(See Volume 25)
Amended	2765		808 KAR 10:141	2262	(See Volume 25)
601 KAR 1:005			808 KAR 10:150		
Amended	1932		Amended	2181	(See Volume 25)
Amended	2392	6-16-98			

LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	24 Ky.R Page No.	Effective Date	Regulation Number	24 Ky.R. Page No.	Effective Date
808 KAR 10:160 Amended	2182	(See Volume 25)	815 KAR 20:055 Amended	2463	
808 KAR 10:170 Amended	2183	(See Volume 25)	815 KAR 20:120 Amended	2465	
808 KAR 10:200 Amended	2185	(See Volume 25)	902 KAR 8:040 Amended	2192	
808 KAR 10:210 Amended	2186	(See Volume 25)	902 KAR 8:060 Amended	2194	
808 KAR 10:225 Amended	2188		902 KAR 8:070 Amended	2197	
808 KAR 10:240 Amended	2190	(See Volume 25)	902 KAR 8:080 Amended	2200	
808 KAR 10:260 Amended	2190	(See Volume 25)	902 KAR 8:090 Amended	2204	
808 KAR 10:300 Amended	2191	(See Volume 25)	902 KAR 8:100 Amended	2206	
808 KAR 10:310	2263	(See Volume 25)	902 KAR 8:110 Amended	2208	
808 KAR 10:320	2264	(See Volume 25)	902 KAR 8:120 Amended	2210	
808 KAR 10:330	2265	(See Volume 25)	902 KAR 8:130 Amended	2215	
808 KAR 10:340	2266	(See Volume 25)	902 KAR 8:140 Amended	2216	
808 KAR 10:350	2268	(See Volume 25)	902 KAR 20:026 Amended	2218	
808 KAR 10:360	2269	(See Volume 25)	902 KAR 20:048 Amended	2226	
808 KAR 10:370	2270	(See Volume 25)	902 KAR 20:051 Amended	2233	
808 KAR 10:380	2271	(See Volume 25)	902 KAR 20:180 Amended	1962	
808 KAR 10:390	2273	(See Volume 25)	As Amended	2401	
810 KAR 1:001 Amended	2445		902 KAR 50:031 Amended	1573	
810 KAR 1:009 Amended	2447		902 KAR 50:032 Amended	1575	
810 KAR 1:015 Amended	2450		902 KAR 55:033 Amended	1578	
810 KAR 1:016 Amended	2452		902 KAR 100:010 Amended	2770	
810 KAR 1:018 Amended	1776		904 KAR 2:015 Amended	2472	(See Volume 25)
As Amended	2694	6-16-98	905 KAR 1:360 Amended	2477	(See Volume 25)
810 KAR 1:026 Amended	1779		907 KAR 1:595	2788	
As Amended	2698	6-16-98	907 KAR 3:030	2790	
811 KAR 1:085 Amended	1782		908 KAR 1:311	2484	
As Amended	2702	6-16-98	908 KAR 1:370	2485	
811 KAR 1:090 Amended	2454		908 KAR 2:190	2043	
811 KAR 1:215 Amended	2456		Amended	2729	
815 KAR 7:105 Amended	2769				
815 KAR 8:045	2483				
815 KAR 20:020 Amended	2460				

*Statement of Consideration Not Filed by Deadline

LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	25 Ky.R. Page No.	Effective Date	Regulation Number	25 Ky.R. Page No.	Effective Date
----------------------	----------------------	-------------------	----------------------	----------------------	-------------------

VOLUME 25

EMERGENCY ADMINISTRATIVE REGULATIONS: (Note: Emergency regulations expire 170 days from publication, or 170 days from publication plus number of days of requested extensions, or upon replacement or repeal, whichever occurs first)

31 KAR 4:130E	36	5-20-98
603 KAR 7:080E	37	5-15-98
904 KAR 2:018E	42	5-15-98
904 KAR 2:380E	44	6-15-98
907 KAR 3:065E	48	5-15-98

ORDINARY ADMINISTRATIVE REGULATIONS:

13 KAR 2:045	
As Amended	51
200 KAR 7:011	139
201 KAR 8:400	
As Amended	55
201 KAR 11:147	
As Amended	57
201 KAR 11:175	
As Amended	57
201 KAR 11:350	
As Amended	58
201 KAR 20:056	
As Amended	60
301 KAR 3:010	
As Amended	62
405 KAR 16:060	
As Amended	63
405 KAR 18:060	
As Amended	66
501 KAR 1:030	
As Amended	69
501 KAR 6:040	
Amended	125
501 KAR 6:110	
Amended	126
701 KAR 5:110	
As Amended	75
702 KAR 7:065	
Amended	127
704 KAR 20:082	
As Amended	76
704 KAR 20:670	
As Amended	76
704 KAR 20:690	
Amended	129
772 KAR 1:010	139
772 KAR 1:020	141
772 KAR 1:030	142
772 KAR 1:040	142
772 KAR 1:050	144
772 KAR 1:060	145
772 KAR 1:070	146
781 KAR 1:020	
As Amended	78
781 KAR 1:030	
Amended	131
781 KAR 1:040	
As Amended	82

782 KAR 1:030	
Amended	133
782 KAR 1:040	
Amended	136
789 KAR 1:010	147
808 KAR 10:010	
As Amended	83
808 KAR 10:020	
As Amended	84
808 KAR 10:030	
As Amended	85
808 KAR 10:040	
As Amended	86
808 KAR 10:080	
As Amended	86
808 KAR 10:090	
As Amended	87
808 KAR 10:110	
As Amended	87
808 KAR 10:130	
As Amended	88
808 KAR 10:141	
As Amended	88
808 KAR 10:150	
As Amended	88
808 KAR 10:160	
As Amended	89
808 KAR 10:170	
As Amended	90
808 KAR 10:200	
As Amended	91
808 KAR 10:210	
As Amended	91
808 KAR 10:240	
As Amended	94
808 KAR 10:260	
As Amended	94
808 KAR 10300	
As Amended	95
808 KAR 10:310	
As Amended	95
808 KAR 10:320	
As Amended	95
808 KAR 10:330	
As Amended	96
808 KAR 10:340	
As Amended	96
808 KAR 10:350	
As Amended	97
808 KAR 10:360	
As Amended	98
808 KAR 10:370	
As Amended	98
808 KAR 10:380	
As Amended	99
808 KAR 10:390	
As Amended	101
902 KAR 8:060	
Amended	108
902 KAR 8:070	
Amended	110
902 KAR 8:080	
Amended	113

LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	25 Ky.R. Page No.	Effective Date	Regulation Number	25 Ky.R. Page No.	Effective Date
902 KAR 8:100 Amended	116				
902 KAR 8:120 Amended	118				
902 KAR 8:140 Amended	123				
904 KAR 2:015 As Amended	101	6-11-98			
905 KAR 1:360 As Amended	105	6-11-98			

KRS SECTION

REGULATION

KRS SECTION

REGULATION

KRS INDEX

Chapter 45A	200 KAR	7:011	45 CFR	904 KAR	2:380E
Chapter 56	200 KAR	7:011	29 USC	781 KAR	1:030
Chapter 96A	603 KAR	7:080E		782 KAR	1:030
117.085	301 KAR	4:130E		782 KAR	1:040
Chapter 151B	603 KAR	7:080E	42 USC	904 KAR	2:018E
151B.190	781 KAR	1:030	49 USC	907 KAR	3:065E
	789 KAR	1:010		603 KAR	7:080E
156.070	702 KAR	7:065			
Chapter 157	603 KAR	7:080E			
161.030	704 KAR	20:690			
Chapter 163	603 KAR	7:080E			
163.450-163.470	782 KAR	1:030			
	782 KAR	1:040			
164A.410	772 KAR	1:060			
164A.560	772 KAR	1:010			
	772 KAR	1:020			
164A.565	772 KAR	1:010			
	772 KAR	1:020			
164A.570	772 KAR	1:030			
164A.575	772 KAR	1:020			
	772 KAR	1:040			
164A.580	772 KAR	1:020			
	772 KAR	1:040			
164A.585	772 KAR	1:020			
	772 KAR	1:040			
164A.590	772 KAR	1:020			
	772 KAR	1:040			
164A.595	772 KAR	1:020			
	772 KAR	1:040			
164A.600	772 KAR	1:020			
	772 KAR	1:040			
164A.605	772 KAR	1:020			
	772 KAR	1:050			
164A.610	772 KAR	1:070			
164A.620	772 KAR	1:020			
	772 KAR	1:060			
Chapter 194	603 KAR	7:080E			
194.025	907 KAR	3:065E			
Chapter 195	603 KAR	7:080E			
195.025	907 KAR	3:065E			
Chapter 196	501 KAR	6:040			
	501 KAR	6:110			
Chapter 197	501 KAR	6:040			
	501 KAR	6:110			
Chapter 202A	603 KAR	7:080E			
Chapter 202B	603 KAR	7:080E			
Chapter 205	603 KAR	7:080E			
205.200	904 KAR	2:018E			
205.211	904 KAR	2:018E			
205.520-205.625	904 KAR	2:380E			
205.710-205.800	904 KAR	2:380E			
205.992	904 KAR	2:380E			
Chapter 209	603 KAR	7:080E			
Chapter 210	603 KAR	7:080E			
Chapter 216	603 KAR	7:080E			
Chapter 273	603 KAR	7:080E			
Chapter 281	603 KAR	7:080E			
281.014	907 KAR	3:065E			
407.010-407.480	904 KAR	2:380E			
Chapter 439	501 KAR	6:040			
	501 KAR	6:110			
Chapter 645	603 KAR	7:080E			
34 CFR	781 KAR	1:030			
	782 KAR	1:030			
	782 KAR	1:040			
42 CFR	907 KAR	3:065E			

SUBJECT INDEX

ABSENTEE BALLOT

(See Elections, State Board)

ASSISTIVE TECHNOLOGY LOAN CORPORATION

General eligibility criteria; 789 KAR 1:010

BLIND, DEPARTMENT FOR

Appeal procedures; 782 KAR 1:040

Scope and nature of services; 782 KAR 1:030

CABINET FOR FAMILIES AND CHILDREN

Social Insurance

Public assistance; 904 KAR Chapter 2

CABINET FOR HEALTH SERVICES

Medicaid

Payment and services; 907 KAR Chapter 3

CORRECTIONS, DEPARTMENT OF

Institution Policies and Procedures

Kentucky State Penitentiary; 501 KAR 6:040

Roederer Correctional Complex; 501 KAR 6:110

DISTRICT SUPPORT SERVICES

School Terms, Attendance, Operations

High school interscholastic athletics, designation of agent; 702 KAR 7:065

EDUCATION, ARTS, AND HUMANITIES CABINET

Education Department

District Support Services

School terms, attendance, operation; 702 KAR Chapter 7

Education Professional Standards Board; 704 KAR Chapter 20

EDUCATION DEPARTMENT

District Support Services

School terms, attendance, operation; 702 KAR Chapter 7

EDUCATION PROFESSIONAL STANDARDS BOARD

Kentucky Teacher Internship Program; 704 KAR 20:690

ELECTIONS, STATE BOARD

Forms and Procedures

Absentee ballot application by facsimile; 31 KAR 4:130E

ENGINEERING

Repeal of 200 KAR 7:010; 200 KAR 7:011

FINANCE AND ADMINISTRATION

Engineering; 200 KAR Chapter 7

HIGHWAYS

Mass Transportation

Human service transportation delivery; 603 KAR 7:080E

JUSTICE CABINET

Corrections Department

Institution policies and procedures; 501 KAR Chapter 6

KENTUCKY WORKS

(See Social Insurance)

MEDICAID

Payment and Services

Nonemergency medical transportation waiver services, payments; 907 KAR 3:065E

MURRAY STATE UNIVERSITY

Affiliated corporations; 772 KAR 1:070

Annual audit; 772 KAR 1:030

Financial management responsibility delegation; 772 KAR 1:020

Fund acquisition, disbursement, accounting system, records and annual report; 772 KAR 1:010

Fund for excellence; 772 KAR 1:060

Issuance of bonds; 772 KAR 1:050

Purchase, inventories, sales of surplus property, capital construction procedures; 772 KAR 1:040

PENAL INSTITUTIONS

(See Corrections Department)

SOCIAL INSURANCE

Public Assistance

Child Support Enforcement Program application process; 904 KAR 2:380E

Transportation services for Kentucky Works; 904 KAR 2:018E

TRANSPORTATION CABINET

Highways

Mass transportation; 603 KAR Chapter 7

VOCATIONAL REHABILITATION

Administration

Selection, economic test, order; 781 KAR 1:030

WORKFORCE DEVELOPMENT CABINET

Assistive Technology Loan Corporation; 789 KAR Chapter 1

Blind, Department for; 782 KAR Chapter 1

Vocational Rehabilitation

Administration; 781 KAR Chapter 1